P.E.R.C. NO. 84-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MT. OLIVE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-83-162-87

LOCAL UNION NO. 11, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge that Local Union No. 11, International Brotherhood of Teamsters filed against the Mt. Olive Board of Education. The charge had alleged that the Board refused to reduce an agreement to writing; had dealt directly with employees instead of the majority representative concerning grievances; had made promises of benefits to aid efforts to decertify Local 11; and had threatened to subcontract work. The Commission holds that Local No. 11 failed to prove its allegations by a preponderance of the evidence.

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LOCAL UNION NO. 11, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Charging Party.

Appearances:
For the Respondent, Green & Dzwilewski, Esqs. (Paul H. Green, of Counsel)

For the Charging Party, Schneider, Cohen & Solomon, Esas. (Bruce D. Leder, of Counsel)

DECISION AND ORDER

On January 3, 1983, Local Union No. 11, International Brotherhood of Teamsters ("Local 11") filed an unfair practice charge against the Mount Olive Board of Education ("Board") with the Public Employment Relations Commission. Local 11 alleged that the Board violated subsections 5.4(a)(1), (3), and (5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by engaging in a "course of conduct which [was]

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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act; and (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."

designed to intimidate, coerce and restrain employees from the exercise of rights guaranteed by the Act." The charge specifically alleged that the Board refused to reduce the parties' negotiated collective negotiations agreement to writing. The charge also alleged that the superintendent "dealt directly" with employees concerning grievances and the assignment of work schedules; threatened employees active in the union; made promises of benefits to aid efforts to decertify Local 11; and threatened to subcontract work.

On May 5, 1983, the Director of Representation and Unfair Practices issued a Complaint and Notice of Hearing.[2/] On May 16, 1983, the Board filed its Answer denying the allegations of the Complaint. With respect to the alleged refusal to execute a written agreement, the Board specifically denied that an agreement had been reached.

On July 25, 1983, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and presented exhibits. The parties waived oral argument, but filed post-hearing briefs.

On September 28, 1983, the Hearing Examiner issued his report and recommended decision. H.E. No. 84-20, 9 NJPER ___

2/ On the same date, the Director refused to dismiss an employee's petition to decertify Local 11. D.R. No. 83-29, 9 NJPER ___ (¶_____ 1983). He rejected Local 11's argument that the June 17, 1982 memorandum of agreement in dispute in this case constituted a contract bar under N.J.A.C. 19:11-2.8 to a representation election. He pended, however, further processing of the representation matter in order to permit resolution of the instant unfair practice charge since determination of the charge might have an impact upon the application of N.J.A.C. 19:11-2.8.

(¶_____ 1983) (copy attached). He recommended dismissal of the Complaint. He specifically concluded that the Board did not unlawfully refuse to reduce an agreement to writing because he found the parties had not agreed on the structure of the salary guide and that the Board had not refused to negotiate in good faith. He further concluded that the Board did not violate subsections 5.4(a)(1) and (3) of the Act when its superintendent met with individual bus drivers to resolve grievances because a shop steward for Local 11 was present during the meetings and that the superintendent had not made the alleged threats and promises.

On November 22, 1983, after requesting and receiving extensions, Local 11 filed its exceptions. Local 11 argues that from June 17, 1982 through January 3, 1983, the Board had an "ill-conceived plan" to avoid ever signing an agreement with Local 11 and that the Board thus violated its obligations to negotiate in good faith and reduce an agreement to writing. Local 11 also excepts to the Hearing Examiner's finding that the Board did not commit an independent violation of subsection 5.4(a)(1) when its superintendent met with employees to discuss a grievance concerning hours of work.

In 1981, Local 11 was certified as the majority representative for the bus drivers employed by the Mount Olive Board of Education. In the spring of 1982, the parties met on several occasions to negotiate an agreement. At the conclusion of the June 17, 1982 meeting, the parties executed the following memorandum of understanding:

(1) 1981-1982 10% 1982-1983 10% 1983-1984 10%

All employees to receive the above percentages. All employees to receive appropriate steps each year. Money is retroactive to July 1, 1981.

(2) All employees hired before Sept. 1, 1982 will be paid on a 200 day basis.

New employees hired after Sept. 1, 1982 will be paid on a day for day basis.

(3) Medical Insurance -- must work 30 hrs. to qualify. Grandfather clause re: all employees hired prior to September 1, 1981.

(4) Binding Arb -- reopener conditioned on Sect., Cust. & Cafe. employees.

(5) All work assignments by seniority specified -- to be worked out. Pilot Program for 1982-3 only.

(6) All language must still be resolved.

(7) This is subject to ratification by both parties.

This agreement was signed by representatives of both the Board and Local 11. At a membership meeting on June 23, 1982, Local 11 ratified the memorandum of understanding.[3/] By letter dated June 25, 1982, Local 11 advised the Board of its ratification and advised that "[t]he contract is being typed and a copy will be forwarded to you upon completion." By letter dated July 2, 1982, Local 11's president sent a proposed copy of the contract to the Board's superintendent, and advised him to "Kindly check same and call our office to make arrangements to sign the Agreement." The Board did not respond. On July 15, Local 11 again requested that the Board sign the agreement and on July 21, 1983, the union's attorney sent a letter to the Board asking that the agreement be signed.

3/ The Board apparently ratified the memorandum subsequently.

By letter dated August 30, 1982, the Board responded to Local 11's proposed draft and suggested nine changes. Among other items, the Board objected to the proposed salary guides since they were exclusive of the increment. The Board's position was that the negotiated salary increases were inclusive of the increment. Therefore, it proposed alternative salary guides. The Board also disagreed with the contract article establishing a safety committee since it believed there had been no agreement to establish such a committee. The letter concluded: "Kindly furnish us with a copy of the proposed contract embodying the above modifications and signed by the appropriate officials so that we may present it to the Board of Education."

By letter dated September 3, 1982, Local 11 responded. It agreed with seven of the items which the Board proposed. It disagreed with the proposed salary guides since its position was that the increases were exclusive of the increment. It also reiterated its demand that a safety committee be included in the contract. Finally, it proposed that a portion of the agreement concerning insurance coverage be deleted. Thus, according to Local 11's chief negotiator, "there were three outstanding issues" at that point in time.

By letters dated November 1 and 24, 1982, Local 11's attorney demanded that the Board sign its proposed agreement. The question of the salary increases, however, remained unresolved. On January 9, 1983, the Board's attorney responded: "Kindly advise as to the status of the salary guides for the proposed contract."

While the parties were seeking to resolve their negotiations differences, a grievance arose as the result of the reduction in the amount of hours worked by senior drivers in the district. Due to the closing of a school and budgetary restraints, senior drivers no longer were assigned "double runs." Therefore, their hours of work were reduced from six to five hours for the upcoming 1982-1983 school year. The bus drivers affected (approximately 12-14 employees) initiated a meeting with the superintendent to complain about this reduction. One of those present was bus driver Edna Mae Fulton, who, as the superintendent knew, was not affected by the reduction in hours, but was one of Local 11's three shop stewards; Fulton had been present at negotiations and the superintendent believed she was representing Local 11 at this meeting in her role as shop steward. The employees objected to the reduction in hours, arguing that they were performing essentially the same work. The meeting concluded with the Board superintendent advising that he would look into the situation.

On August 4, 1982, Local 11 wrote a letter objecting to this meeting:

> ...on August 3, 1982, you conducted a meeting with certain members of the bargaining unit. Please be advised that Local 11 objects to the conduct of said meeting. If you are desirous of communicating with bargaining unit employees, it is requested that you contact Local 11 first, and they will be more than happy to arrange any meetings you feel are necessary.

On September 8, 1983, the union business representative wrote again to the Superintendent, and stated:

> ...there appears to have been a substantial cutback in the number of runs this year as compared to last year. There has been no explanation offered as to why the same runs are being reduced in terms of

> running time. It is respectfully requested that at the meeting when assignment of runs is discussed an explanation be extended to the authorized union representatives as to why the time for those runs is reduced.

On September 22, 1982, the superintendent responded:

> I have recently received your request from some of the drivers questioning the number of hours for their particular runs. I am presently seeking a resolution to that problem.

Local 11 did not respond to this letter.

In late fall, the superintendent again met with the bus drivers. It is not clear who initiated this meeting. Joyce Aukamp, another shop steward for Local 11, was present at the meeting and the superintendent believed she was there on behalf of Local 11. After this meeting and further investigation, the Board resolved the grievance by agreeing to compensate the drivers with an additional half hour of pay; they had been seeking one hour of pay.

Subsequent to this settlement, Local 11 filed a formal grievance claiming that certain less senior drivers were also entitled to extra pay. The superintendent met with these employees. He did not grant their grievance because his investigation revealed that they were seeking pay for "layover time" which the Board had never paid. Thus, the superintendent believed their grievance was distinguishable from the senior drivers, who, he thought, were entitled to extra pay due to the amount of driving they were doing. This unfair practice charge was then filed.

We agree with the Hearing Examiner that the Board did not refuse to reduce a negotiated agreement to writing.[3/] The plain

3/ The charge did not allege a violation of subsection (a)(6) which prohibits public employers, their representatives or agents from (Continued)

fact, as found by the Hearing Examiner, is that the parties never reached agreement on the structure of the salary guide. Thus, there was no agreement to be reduced to writing. The parties' memorandum of agreement is ambiguous regarding whether the salary increases were to be inclusive or exclusive. Resort to extrinsic evidence simply does not permit the requisite finding that the Board ever agreed that the negotiated salary increases were exclusive of increment. To the contrary, Local 11's chief negotiator admitted that the Board had advised him that the agreement was inclusive of increments.

Local 11 does not except to the Examiner's finding that no "meeting of the minds" existed with respect to the salary guide. It does argue, however, that the Board's refusal to agree to the Union's proposed salary guides, considered in light of all the circumstances, demonstrates a refusal to negotiate in good faith because the "stance of the Board was to not agree to a complete agreement." We disagree.

The standard for determining a refusal to negotiate in good faith was first set forth in State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976). That case states:

> It is necessary to subjectively analyze the totality of the parties' conduct in order to determine whether an illegal refusal to negotiate may have occurred...A determination that a party has refused to negotiate in

3/ (Continued) "refusing to reduce a negotiated agreement to writing and to sign such an agreement." Nevertheless, the specifications in the body of the charge clearly set forth the basis for such an allegation and the matter was fairly and fully litigated. See Commercial Township Board of Education, P.E.R.C. No. 83-25, 8 NJPER 550, 553 (¶13253 1982), appeal pending App. Div. Docket No. A-1642-82T2.

> good faith will depend upon an analysis of the overall conduct and/or attitude of the party charged. The object of this analysis is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement. [Id. at 40] [Footnotes omitted]

Our review of the record in light of this standard convinces us that the Board's actions during negotiations did not constitute an illegal refusal to negotiate. The Board demonstrated a sincere desire to reach agreement. This desire is manifested by the February 17, 1982 memorandum of agreement and the subsequent efforts to resolve language differences between the parties. In fact, the only stumbling block which prevented the parties from reaching an agreement was the difference concerning increments and the salary guide. As already noted, the Board did not agree that the salary increases were intended to be exclusive of increment. The most that can be said regarding this position is that the Board took a firm position that salary increases were to be inclusive of increment. Such a position does not constitute an unfair practice. What was said in State of New Jersey, supra, 1 NJPER 39 is applicable here and worthy of repetition:

> It is well established that the duty to negotiate in good faith is not inconsistent with a firm position on a given subject. 'Hard bargaining' is not necessarily inconsistent with a sincere desire to reach an agreement. An adamant position that limits wage proposals to existing levels is not necessarily a failure to negotiate in good faith. [Id. at 40]

The next issue is whether the Board violated the Act when its superintendent twice met with bus drivers concerning their grievances. We hold it did not.

There can be no question but that Local 11, as exclusive representative of the employees in question, had the statutory right to be present at such meetings. N.J.S.A. 34:13A-5.3 provides, in pertinent part:

> Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit.

Moreover, we have stressed that the exclusivity principle is "a cornerstone of the Act's structure for regulating the relationship between public employers and public employees." New Jersey Department of Law and Public Safety, I.R. No. 83-2, 8 NJPER 425, 427 (¶13197 1982). See also Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409, 426 (1970). Under the particular circumstances of this case, however, we agree with the Hearing Examiner that the superintendent's meetings with bus drivers to discuss and adjust grievances did not violate the exclusivity principle. N.J.S.A. 34:13A-3(e) specifically notes that the term "representative" includes "any organization, agency or person authorized or designated by a public employer, public employee, group of public employees or public employee association to act on its behalf and represent it or them." The superintendent knew that Local 11 shop stewards were present at each meeting and that these stewards had previously participated in contract negotiations. Thus, the superintendent reasonably believed he was dealing with duly authorized representatives of the union. Further, Local 11 never specifically disavowed the authority of its shop stewards to represent employees at initial discussions of informal grievances, a function well

within the usual authority of shop stewards. Given these circumstances, we are satisfied that the two shop stewards who were present had, at the very least, the "apparent authority" to represent employees on behalf of Local 11. See Randolph Township Board of Education, P.E.R.C. No. 83-119, 8 NJPER 365, 367 (¶13167 1982).

The Local has also claimed that the resolution of the senior bus drivers' grievances, when considered in contrast to the refusal to adjust the grievances filed by the junior bus drivers, constitutes unlawful discrimination based on union activity. We disagree. The evidence establishes that, with respect to the senior bus drivers, the superintendent reasonably believed that he was resolving a grievance with an authorized representative of Local 11. Further, there is no evidence that the denial of the junior bus drivers' grievance was based on union activity rather than a legitimate position that employees were not entitled to compensation for layover time.

Finally, we agree with the Hearing Examiner that Local 11 has not proved by a preponderance of evidence that the superintendent or Board made any of the promises or threats alleged in the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett and Suskin voted in favor of the decision. Commissioner Graves voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
December 9, 1983
ISSUED: December 12, 1983

H. E. No. 84-20

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

In the Matter of

MT. OLIVE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-83-162-87

LOCAL 11, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did not violate Subsections 5.4(a)(1), (5) and (6) of the New Jersey Employer-Employee Relations Act when it refused to execute proposed collective negotiations agreements submitted by the Charging Party under the circumstances of there being no meeting of the minds on the structure of the salary guides; the Charging Party insisted that the percentage wage increases should not include increments whereas the Board insisted that increments should be included. The Hearing Examiner also recommended that the Commission find that the Respondent Board did not violate Subsections 5.4(a)(1) and (3) by the conduct of its Superintendent in meeting with individual bus drivers, at their request, where a Shop Steward for the Charging Party was present at all times.

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.

H.E. No. 84-20

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Appearances:

For the Mt. Olive Board of Education
Green & Dzwilewski, Esqs.
(Paul H. Green, Esq.)

For the Charging Party
Schneider, Cohen & Solomon, Esqs.
(Bruce D. Leder, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on January 3, 1983 by Local 11, International Brotherhood of Teamsters (hereinafter the "Charging Party" or "Local 11") alleging that the Mt. Olive Board of Education (hereinafter the "Respondent" or the "Board") has 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 since September 1982 the Respondent's Superintendent has threatened employees in the collective negotiations unit and made promises of benefit to employees who aid in the process of decertifying Local 11 and, additionally, the Superintendent has dealt directly with employees regarding the handling of grievances and the assigning of work schedules and further, the Board has threatened to subcontract unit work in an attempt to coerce employees into refraining from the support of Local 11 and, finally, the Board has refused to

reduce to writing the negotiated collective agreement, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) of the Act.[1/]

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 5, 1983. Pursuant to the Complaint and Notice of Hearing, a hearing was held on July 25, 1983 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by September 20 , 1983.

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 consideration of the post-hearing briefs of 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. The Mt. Olive Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Local 11, International Brotherhood of Teamsters is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

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.

"(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

Although the Charging Party failed specifically to allege a violation of Section 5.4(a)(6) of the Act in its Unfair Practice Charge there does appear in the body an allegation that the Board has refused to reduce a negotiated agreement to writing and, further, the issue involving an alleged 5.4(a)(6) violation was fully litigated at the hearing, infra: Commercial Township Board of Education, P.E.R.C. No. 83-25, 8 NJPER 550 (1982), appeal pending App. Div. Docket No. A-1642-82T

3. Local 11 was certified in 1981 as the majority representative for a collective negotiations unit of all full-time and part-time bus drivers employed by the Respondent.

4. On March 25, 1982 Local 11 submitted its contract proposals to the Board and on April 29, 1982 the Board submitted its contract proposals to Local 11. At a collective negotiations meeting on May 27, 1982 the parties discussed only Local 11's proposals.

5. Following a meeting of the attorneys for the parties on June 15, 1982, the parties met on June 17, 1982 and at the conclusion of the meeting executed a Memo of Understanding (J-1). This Memo provided for percentage wage increases over a three-year term and stated that all employees were to receive "appropriate steps each year."[2/]

6. On June 23, 1982 the employees represented by Local 11 ratified the Memo of Understanding. On a date unspecified the Board also ratified the Memo of Understanding.

7. On June 25, 1982 John D. Guagliardo, a representative of Local 11, sent a letter to the Superintendent, Chester Stephens, advising of the ratification by Local 11 and stating that a contract was being prepared and would be forwarded to him upon completion (CP-3).

8. On July 2, 1982 Robert J. Feeney, the President of Local 11, sent a copy of the proposed negotiated agreement to the Superintendent for review (CP-4). When the Superintendent had not responded by July 15, Feeney sent another letter requesting that Superintendent call the Local 11 office in order to set a date for execution of the agreement (CP-5). When the Superintendent continued in his refusal to respond, the attorney for Local 11 wrote to the Superintendent on July 21, 1982 (CP-6).

2/ This provision for "steps each year" was to become a problem in the ultimate inability of the parties to agree on salary guides for the three years of the proposed agreement. Local 11 insisted that the percentage increases in the hourly rates did not include the increment while the Board insisted that the increases in the hourly rates included the increment. (See Finding of Fact No. 13, infra).

9. On August 30, 1982 the attorney for the Board sent to the attorney for Local 11 a letter, which, in nine numbered paragraphs, contained certain suggested changes in the language of the proposed agreement (CP-8). On September 3, 1982 Guagliardo wrote to the Board's attorney stating that Local 11 was agreeable to the proposed changes contained in paragraphs 1 through 7, but objected to paragraph 8, the proposed salary guides, which included the increment, and paragraph 9, the Safety Committee (CP-9). The attorney for the Board stated that it had not agreed to the establishment of a Safety Committee, and Local 11 ultimately withdrew this proposal (see CP-16 and CP-17).

10. On October 27, 1982 Dianne Meehan, a member of the collective negotiations unit represented by Local 11, filed a petition for decertification, Docket No. RD-83-6 (C-3), which has been held in abeyance pending the outcome of the instant unfair practice proceeding.

11. Following an exchange of letters between the attorneys for the parties on November 1, 1982 (CP-12 and CP-13), Feeney, on November 16, 1982, sent to the attorney for the Board three copies of the most recent proposed collective negotiations agreement for execution (see CP-14 enclosing three copies of CP-18).

12. When the proposed agreement had not been executed by November 24th the attorney for Local 11 wrote to the attorney for the Board threatening appropriate action if the agreement was not executed within ten days (CP-15). When nothing further transpired Local 11 filed the instant Unfair Practice Charge on January 3, 1983, one of the allegations being that the Board had failed to execute a negotiated agreement (C-1).

13. As of February 9, 1983 the parties were still in disagreement over the structure and composition of the salary guides (CP-17). As of that date, the Hearing Examiner finds that all other issues had been resolved, as reflected in the Memo of Understanding (J-1) together with the subsequent correspondence and draft agreements, in particular, CP-8 and CP-18, supra.

14. The Superintendent, who has been involved in collective negotiations on behalf of the Board since 1964, testified without contradiction that negotiated salary guides always included the increment.

15. By way of implementation of paragraph 5 of the Memo of Understanding, supra, which provides that all work assignments will be made by seniority and that a pilot program is to be established in 1982-83, Local 11 designated Dolores Ogg and Cathy Dow as its representatives to meet with Susan Morin, the Transportation Coordinator of the Board, to establish the system for assignment of the 1982-83 bus runs (CP-7).

16. Under date of August 4, 1982 the attorney for Local 11 wrote to the Superintendent, reminding him of the designation of Ogg and Dow as the Local 11 representatives, supra, and complaining to the Superintendent about his having conducted a meeting with certain members of the collective negotiations unit on August 3, 1982 without having first contacted Local 11 (CP-7).

17. It is clear from the testimony of the witnesses for the parties that there was a meeting in August 1982 between the Superintendent and 12 to 14 bus drivers regarding a reduction in hours from six to five per day for drivers with the least seniority. This reduction meant a loss in pay for one hour per day. Present at the meeting was one of the three Shop Stewards designated by Local 11, Edna Mae Fulton. The Superintendent explained the reason for the reduction in hours, namely, the closing of one school and budget restraints. After hearing the bus drivers' complaints the Superintendent said that he would look into the situation. Local 11, on September 8, 1982, complained about the Superintendent's handling of the situation (CP-10) and the Superintendent responded on September 22, 1982 (CP-11). After a further meeting in the late Fall of 1982 where Shop Steward Joyce Auckamp was present, the Board resolved the matter by the increase of one-half hour per day to five and one-half hours, which was implemented in January 1983, retroactive to December 1, 1982. Other than the presence of Shop Stewards Fulton and Auckamp, no representative of Local 11 was involved in the resolution of this problem.

18. Another meeting between the Superintendent and individual bus drivers had to do with four bus drivers who filed grievances in early January 1983, which complained that senior bus drivers were receiving more work (CP-19 and CP-20). Shop Steward Ogg represented the four bus drivers at a first step meeting with Morin and at a second step meeting with the Superintendent at the end of January 1983. The Superintendent's response was that he would "get back" but never did so.

19. Consistent with the foregoing, the Superintendent testified without contradiction that he never met individually with any employee where a Shop Steward for Local 11 was not present. He also testified credibly that he knew Local 11's Shop Stewards to be Ogg, Fulton and Auckamp. He testified further that he never made any promises of benefit or threats to employees, and the Charging Party adduced no evidence to the contrary. The Hearing Examiner finds that no promises of benefit nor threats to employees in the collective negotiations unit were ever made by the Superintendent. Further, the Hearing Examiner finds that the Superintendent never met with bus drivers individually without a Shop Steward being present.

20. The Charging Party offered no evidence in support of its allegation that the Board threatened to subcontract all "bargaining unit work" in an attempt to coerce employees into refraining from support of Local 11.

THE ISSUES

1. Did the Respondent Board violate Subsections(a)(1), (5) and (6) of the Act by its refusal to execute the several proposed collective negotiations agreements, which were submitted by the Charging Party on and after July 2, 1982?

2. Did the Respondent Board violate Subsections(a)(1) and (3) of the Act by the conduct of its Superintendent in meeting with individual bus drivers where a shop steward for the Charging Party was present at all times?

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate Subsections(a)(1), (5) And (6) Of The Act By Refusing To Execute Agreements Proposed By The Charging Party Since There Was No Meeting Of The Minds On The Salary Guides

It is plain as a pikestaff to the Hearing Examiner that the negotiators for the parties, and their attorneys, totally failed to resolve the impasse over the structure of the salary guides. The basis for salary guides had been agreed to in skeleton form in the Memo of Understanding (J-1). As noted above, in Finding of Fact No. 5, the Memo provided for percentage wage increases over a three-year term and stated that all employees were to receive "appropriate steps each year." Local 11 insisted that the percentage increases in the hourly rate did not include the increment while the Board insisted that the increases in the hourly rate included the increment. Given such a divergence in the negotiating positions of the parties over the structure of the salary guides, it is no wonder that an agreement was never reached, i.e., plainly there was no meeting of the minds at any time on the matter of the structure of the salary guides.

The Charging Party argues that the Board showed bad faith in the back-and-forth of negotiations in an effort to reduce an agreement to writing, citing State of New Jersey, E.D. 79, 1 NJPER 39 (1975), aff'd. 141 N.J. Super. 470 (App. Div. 1976). The Hearing Examiner finds this case inapposite, in view of the fact that the totality of conduct is here not under condsideration, except to the limited extent as to whether or not there was a meeting of the minds on the salary guides. To the extent that the State decision is applicable, the Hearing Examiner finds and concludes that the Respondent herein did not engage in bad faith bargaining and, therefore, did not violate Subsection(a)(5) of the Act.

The Commission and its Hearing Examiners have had several occasions to consider and decide cases involving the question as to whether or not there was a meeting of the minds on the substantive issues in negotiations. See, for exemple, Mt. Olive

Board of Education, P.E.R.C. No. 78-25, 3 NJPER 382 (1977); Passaic Valley Water Commission, P.E.R.C. No. 80-134, 6 NJPER 220 (1980); South Amboy Board of Education, P.E.R.C. No. 82-10, 7 NJPER 448, 451 (1981) and two Hearing Examiner decisions, which were settled before the issuance of a formal Commission decision: Union County Hospital, H.E. No. 82-18, 8 NJPER 2 (1981) and Carlstadt Board of Education, H.E. No. 83-1, 8 NJPER 465 (1982).

Findings of Fact Nos. 8 through 13, supra, make it abundantly clear that there was no meeting of the minds, and thus no agreement, on salary guides on and after July 2, 1982. There being no meeting of the minds, there is no basis for a recommended order by the Hearing Examiner directing the Respondent to execute the last agreement submitted to it by the Charging Party (CP-18). In reaching this conclusion, the Hearing Examiner notes the testimony of the Superintendent, which was not contradicted, that negotiated salary guides have always included the increment. While this is not binding upon Local 11 as a past practice, there being no collective negotiations history between the instant parties, it is an indication to the Hearing Examiner that if the Board was departing from this practice, in dealing with the Local 11 collective negotiations unit, it certainly would have been made clear by express language.

For all of the foregoing reasons, the Hearing Examiner will recommend dismissal of the Subsection(a)(1), (5) and (6) allegations in the Complaint.[3/]

The Respondent Board Did Not Violate Subsections(a)(1) And (3) Of The Act When Its Superintendent Met Several Times With Individual Bus Drivers Where A Shop Steward For The Charging Party Was Present At All Times

First, it is clear that the Superintendent knew who the three Shop Stewards

3/ The Hearing Examiner agrees with the contention of the Respondent that it would have violated that Act if it executed a collective negotiations agreement with Local 11 after the filing of the decertification petition on October 27, 1982: Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (1981) and Bergen County, P.E.R.C. No. 84-2, 9 NJPER 451 (1983).

were by name. Secondly, the Hearing Examiner has no difficulty in finding that Local 11 can be represented at a meeting by its designated and authorized Shop Steward as well as by other officials of Local 11. In this latter connection, it is noted that officials of Local 11 made no serious effort to be present at any meetings between the Superintendent and bus drivers where at least one Local 11 Shop Steward was present. Finally, it is also noted that the Superintendent did not initiate meetings with bus drivers but merely responded when bus drivers approached him or the Transportation Coordinator.

The first meeting took place in August 1982 between the Superintendent and 12 to 14 bus drivers regarding a reduction in hours from six to five per day for drivers with the least seniority. Present at this meeting was Shop Steward Edna Mae Fulton. Local 11 complained to the Superintendent about his handling of the matter on September 8, 1982 but made no effort to intervene. The matter was ultimately resolved after a further meeting in the Fall of 1982 where Shop Steward Joyce Auckamp was present. A retroactive adjustment to the affected bus drivers was made as of December 1, 1982.

Another meeting between the Superintendent and individual bus drivers occurred in January 1983 where Shop Steward Delores Ogg was present. This matter was never resolved, with the Superintendent stating that he would "get back."

The Hearing Examiner has found as a fact (Finding of Fact No. 19, supra) that the Superintendent never met individually with any employee where a Shop Steward for Local 11 was not present. The Superintendent testified credibly that he had never made any promises of benefit or threats to employees, and the Charging Party adduced no evidence to the contrary.

Based upon all of the foregoing, there is no conclusion which can be reached other than that the Respondent Board did not violate Subsections(a)(1) and (3) of the Act. The Hearing Examiner attaches no weight to the filing of the decertification petition on October 27, 1982 vis-a-vis the Superintendent's several meetings with

individual bus drivers where Local 11 Shop Stewards were always present.[4/] Accordingly, the Hearing Examiner will recommend dismissal of the Subsection(a)(1) and (3) allegations in the Complaint.

* * * *

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

CONCLUSIONS OF LAW

1. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (5) and (6) when it refused to execute the several proposed collective negotiations agreements, which were submitted by the Charging Party on and after July 2, 1982, since there was no meeting of the minds on the structure of the salary guides.

2. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) when its Superintendent met several times with individual bus drivers where a Shop Steward for the Charging Party was present at all times.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.

Alan R. Howe
Hearing Examiner

Dated: September 28, 1983
Trenton, New Jersey

4/ Local 11, having offered no evidence in support of its allegation that the Respondent threatened to subcontract bargaining unit work in an attempt to coerce employees into refraining from the support of Local 11, dismissal of this allegation will be recommended.