P.E.R.C. No. 85-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY REGIONAL HIGH SCHOOL
DISTRICT NO. 1,

Respondent,

- and - Docket No. CO-84-156-70

UNION COUNTY REGIONAL HIGH SCHOOL
FEDERATION OF TEACHERS, LOCAL
3417, AFT/AFL-CIO,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, and in the absence of exceptions, dismisses a Complaint filed by the Union County Regional High School Federation of Teachers against Union County Regional High School District No. 1. The charge alleged that the District refused to implement an agreement covering compensatory education teachers. The Chairman concluded, in agreement with the Hearing Examiner, that the Federation did not prove by a preponderance of the evidence that an agreement covering these employees existed.

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Appearances:

For the Respondent, Weinberg & Manoff, Esqs.
(Richard J. Kaplow, Esq., on the brief)

For the Charging Party, Sauer, Boyle, Dwyer & Canellis, Esqs.
(Christopher M. Howard, Esq., on the brief)

DECISION AND ORDER

On December 12, 1983, the Union County Regional High School Federation of Teachers, Local 3417, AFT/AFL-CIO ("Federation") filed an unfair practice charge against Union County Regional High School District No. 1 ("District") with the Public Employment Relations Commission. The Federation alleges that the District violated subsections 5.4(a)(1), (2), (5) and (6)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1,

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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." "(2) Dominating or interfering with the formation, existence or administration of any employee organization." "(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."

et seq., by refusing to implement an alleged agreement covering nine compensatory education teachers.

On January 12, 1984, the Administrator of Unfair Practices issued a Complaint and Notice of Hearing. The Board filed an Answer denying the existence of any agreement concerning these teachers.

On May 8, 1984, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. Both parties filed post-hearing briefs.

On June 14, 1984, the Hearing Examiner recommended dismissal of the Complaint. H.E. No. 84-65, 10 NJPER ___ (¶_____ 1984). He found that the Federation had not proved by a preponderance of the evidence that the parties had reached an agreement.

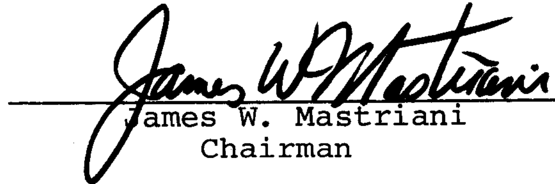
The Hearing Examiner served his report on the parties and advised that exceptions, if any, were due by June 27, 1984. Neither party has filed exceptions or requested an extension of time.

The full Commission has delegated authority to me to decide this case in the absence of exceptions. I have reviewed the record. The Hearing Examiner's findings of fact are accurate. I adopt and incorporate them here. Based upon the findings of fact, and in the absence of exceptions, I agree with the Hearing Examiner that the Federation did not prove by a preponderance of the evidence that an agreement covering these employees existed. The Complaint must be dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: TRENTON, NEW JERSEY
September 6, 1984

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

In the Matter of

UNION COUNTY REGIONAL HIGH SCHOOL
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Respondent,

-and-

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UNION COUNTY REGIONAL HIGH SCHOOL
FEDERATION OF TEACHERS, LOCAL 3417,
AFT/AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Subsections 5.4(a)(1), (2), (5) and (6) of the New Jersey Employer-Employee Relations Act since contrary to the charge by the Charging Party the parties never reached a meeting of the minds during negotiations for an agreement covering Chapter I and Compensatory Education teachers. The Charging Party sought to negotiate for nine teachers, four of whom had been RIFFED as of June 30, 1983, while the Respondent sought to negotiate only for the five teachers being retained for the 1983-84 school year. There was also a failure to resolve a dispute over the payment of benefits for either four RIFFED teachers or the five retained teachers. The Commission has in several decisions dismissed charges of unfair practices where a meeting of the minds on the terms of conditions of employment had not been reached: Borough of Wood-Ridge, P.E.R.C. No. 81-105, 7 NJPER 149 (1981) & Mt. Olive Township Board of Education, P.E.R.C. No. 78-25, 3 NJPER 382 (1977).

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, and 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 conclusion of law.

STATE OF NEW JERSEY
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Appearances:

For the Respondent
Weinberg & Manoff, Esqs.
(Richard J. Kaplow, Esq.)

For the Charging Party
Sauer, Boyle, Dwyer & Canellis, Esqs.
(Christopher M. Howard, 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 12, 1983 by the Union County Regional High School Federation of Teachers, Local 3417, AFT/AFL-CIO (hereinafter the "Charging Party" or the "Federation") alleging that the Union County Regional High School District No. 1 (hereinafter the "Respondent" or the "District") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent, after the Commission clarified the existing unit to include Chapter I and Compensatory Education teachers on March 24, 1983 (D.R. No. 83-22), decided to RIF four out of nine Chapter I and Compensatory Education teachers in April 1983, and thereafter reached an agreement with the Charging Party that the remaining five teachers would be given tenure and placed on the salary guide for the 1983-84 school year, and further, that retroactive pay from March 1983 would be granted to the four teachers who were RIFFED as well as

the five teachers being retained but, thereafter, the Respondent refused to make the retroactive payment for all nine Chapter I and Compensatory Education teachers and refused to place the five teachers being retained on the salary guide for 1983-84, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (5) and (6) 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 January 12, 1984. Pursuant to the Complaint and Notice of Hearing, a hearing was held on May 8, 1984 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 June 11, 1984.

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 Union County Regional High School Distict No. 1 is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Union County Regional High School Federation of Teachers, Local 3417, AFT/AFL-CIO is a public employee representative within the meaning of the

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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.
"(2) Dominating or interfering with the formation, existence or administration of any employee organization.
"(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms 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."

Act, as amended, and is subject to its provisions.

3. Negotiations for a collective negotiations agreement covering a unit of teachers of the Respondent commenced in September 1982. On September 30, 1982 the Charging Party filed a Petition for Clarification of Unit seeking to have Chapter I and Compensatory Education teachers included in the collective negotiations unit.

4. On March 24, 1983 the Commission clarified the Charging Party's collective negotiations unit to include Chapter I and Compensatory Education teachers effective immediately and directed that the terms and conditions of employment applicable to these employees must now be negotiated (D.R. No. 83-22). There were nine teachers involved in the unit as clarified.

5. Sometime in or around the end of April 1983, the Respondent decided to RIF four of the nine Chapter I and Compensatory Education teachers.

6. The first negotiations meeting regarding the Chapter I and Compensatory Education teachers took place on May 31, 1983. At that meeting the Federation took the position that it was negotiating for all nine teachers, notwithstanding that four of the teachers were to be RIFFED as of June 30, 1983. The Federation's negotiations proposals were retroactive salary increase to September 1982 and placement on the guide for the 1983-84 school year for the retained teachers.

7. The response of the District was set forth in a letter dated June 8, 1983 from the Board Secretary (CP-2). This response may be summarized as follows: (a) effective with the 1983-84 school year all Chapter I and Compensatory Education teachers retained shall be given tenure from their date of hire; (b) all of the said teachers are to be placed at the proper step on the salary guide for the 1983-84 school year; (c) all benefits conferred on staff teachers as of September 1983 shall be conferred on Chapter I and Compensatory Education teachers who are retained; and (d) the request for retroactivity to September 1982 is rejected.

8. The next negotiations session occurred on July 19, 1983. A summary of the

evidence adduced by each party as to what transpired is as follows:

a. Evelyn McGill, the President of the Charging Party, testified that the Federation's position was that it was negotiating for the nine Chapter I and Compensatory Education teachers but acknowledged the District's negotiator stated it was negotiating for five teachers (Tr. 17). After discussions back and forth between the respresentatives of the parties the Respondent caucused. McGill also testified that after returning from the caucus, the attorney for the Respondent stated that the District "agreed" to retroactive salary for all nine teachers from March 1983 to the end of the school year, June 30, 1983, with no retroactive benefits (Tr. 17, 19). When the Charging Party's representatives stated that benefits were still an issue, the attorney for the Respondent asked for the dollar amount and McGill stated that this would be supplied, based on bills to be submitted. John P. Fallan, a staff representative for the State Federation, testified that he took notes of the meeting and that these notes confirm that the retroactive date discussed was March 24, 1983, the date of CP-1, and that after the caucus the Respondent's committee recommended a 30% salary increase and no insurance (CP-5). Fallan, too, was clear that the retroactive offer applied to all nine teachers and not just to the five teachers who were being retained for the 1983-84 school year. He, too, joined in McGill's offer to submit bills and stated that the Respondent's attorney said that it would "take a look."

b. Two witnesses for the Respondent, Charles Bauman, the Assistant Superintendent and a member of the Personnel Committee, and Natalie Waldt, the Chairman of the Personnel Committee, testified that the Respondent's Personnel Committee had no authority to bind the Board and that this had always been made clear to the Charging Party in negotiations up until that point. Bauman testified that the Respondent offered retroactive salary, placement on the salary guide and tenure only for the five teachers being retained. His negotiations notes were introduced in evidence as Exhibit R-1 and confirmed, according to Bauman, that

the offer of 30% salary retroactivity and no insurance retroactivity applied only to the five teachers retained. He pointed to the third page of his notes, which show salary calculation that he made at the meeting, based on five teachers and not nine teachers. Bauman was clear that there was no intention to include the four teachers who were being RIFFED. Waldt's recollection of the details as to what transpired at the meeting was unclear except that the 30% retroactive offer applied only to the five teachers being retained.

9. On September 14, 1983 McGill wrote to the Board Secretary, stating that the Charging Party was willing to accept the Respondent's proposal as set forth in its letter of June 8, 1983, supra, and the 30% retroactive salary increase for the 1982-83 school year as outlined on July 19, 1983 (CP-3). McGill also enclosed the only outstanding medical bill for one of the teachers involved in sum of $601.34.

10. On October 3, 1983 the Respondent's Personnel Committee met. Bauman took notes of the meeting (R-2). The Respondent's attorney reviewed the progress of the negotiations to date and stated that the settlement was calculated on the basis of the five teachers who were being retained with no retroactivity to any teachers who had been RIFFED. It was agreed that the attorney for the Respondent would send a letter to the Federation setting forth the Respondent's final position. This was done under date of October 5, 1983 (CP-4). Thereafter Fallan spoke to the attorney for the Respondent on at least three ocassions but nothing changed thereafter on either side.

11. The Hearing Examiner credits the testimony of the Respondent's witnesses that the Charging Party was clearly apprised during negotiations that the Personnel Committee did not have the authority to bind the District.

THE ISSUE

Did the Respondent violate Subsections(a)(1), (2),[2/] (5) and (6) of the Act by its conduct in negotiations with the Charging Party for a collective negotiations

2/ The Charging Party failed to adduce any evidence which would support a finding of a Subsection(a)(2) violation by the Respondent and, therefore, the Hearing Examiner will recommend dismissal of this allegation.

agreement covering Chapter I and Compensatory Education teachers and by thereafter refusing to reduce to writing and execute a collective negotiations agreement?

DISCUSSION AND ANALYSIS

The Respondent Did Not Violate Subsections(a)(1), (5) and (6) Of The Act By Its Conduct In Negotiations For A Collective Negotiations Agreement Covering Chapter I And Compensatory Education Teachers

It is hornbook law that the Charging Party has the burden of proving the allegations in the Unfair Practice Charge by a preponderance of the evidence. Failure to do so necessarily results in a dismissal of the unfair practice allegations.

It is plain as a pikestaff that the parties in this proceeding never reached a meeting of the minds as to the substantive terms and conditions of employment for Chapter I and Compensatory Education teachers of the Respondent. Further, the parties never resolved the issue of whether the terms of a collective negotiations agreement were to apply to nine teachers or just to the five teachers, who were to be retained for the 1983-84 school year.

Finding of Fact No. 8, supra, demonstrates the divergence in the parties' positions in negotiations from May through July 1983. To illustrate, the Charging Party's two witnesses insisted that they were negotiating for nine teachers while the Respondent's two witnesses insisted that they were negotiating only for the five teachers being retained. Thus, it is clear that there was never an agreement over the number of teachers who were the subject of negotiations for an agreement.

Also, it is plain to the Hearing Examiner that the parties never reached agreement over the benefits issue. The mere fact that McGill sent the only outstanding bill for medical expenses to the Board Secretary on September 14, 1983, and that this was received by the Respondent, is no proof that the Board ever agreed to make payment or to accept the fact that it had agreed to a resolution of the benefits issue. The fact of the matter is that the Respondent ultimately rejected payment of the tendered

bill.

Thus, there having been no meeting of the minds of the parties' negotiators on the number of teachers, who were the subject of negotiations, and, further, there having been no resolution of the benefits issue, the Hearing Examiner can only conclude that the Charging Party has failed in its burden of proof that the Respondent violated the Act as alleged.[3/] The Commission has had occasion to decide several cases where charges of unfair practices were dismissed because of the absence of a meeting of the minds of the parties on the subject matter of their collective negotiations: Borough of Wood-Ridge, P.E.R.C. No. 81-105, 7 NJPER 149 (1981) and Mt. Olive Township Board of Education, P.E.R.C. No. 78-25, 3 NJPER 382 (1977).

Each party briefed the question of the apparent authority of the Respondent's Personnel Committee to bind the District. The Hearing Examiner, although having made a finding of fact on the issue, need not address the issue on the merits since agreement was never reached with the Charging Party for the reasons set forth above.

* * * *

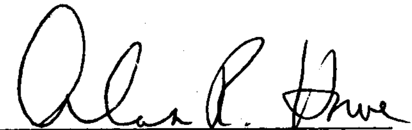
Upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent did not violate N.J.S.A. 34:13A-5.4(a)(1), (2), (5) and (6) by its conduct in negotiations for a collective negotiations agreement covering Chapter I and Compensatory Education teachers.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

Dated: June 14, 1984
Trenton, New Jersey

3/ It is concluded further that the Respondent did not manifest bad faith and, therefore, Subsection (a)(5) was not violated.