

D.U.P. NO. 92-5

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

In the Matter of

OLD BRIDGE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-91-338

OLD BRIDGE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Representation dismisses an unfair practice charge filed by the Old Bridge Education Association against the Old Bridge Board of Education. The charge alleged that the Board refused to negotiate in good faith when it failed to appeal certain budget cuts and stated to the media that budget cuts would reduce the Board's offer at the parties' contract negotiations. The Director found that these actions, even if proven true, would not be unfair practices. He found that setting budgets is a managerial function; that budgets are only estimates, and that the Board retained discretion in its negotiations positions. No facts were alleged suggesting that the Board refused to meet and exchange proposals with the Association with an intention to reach agreement.

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Appearances:

For the Respondent,
Wilentz, Goldman & Spitzer, attorneys
(Harold G. Smith, of counsel)

For the Charging Party,
Glenn R. Johnson, President

REFUSAL TO ISSUE COMPLAINT

On June 7, 1991, the Old Bridge Education Association ("Association") filed an unfair practice charge against the Old Bridge Board of Education ("Board") alleging that it violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")^{1/} when it failed

^{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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of an employment of employees in that unit, or refusing to process grievances presented by the majority representative."

to appeal the budget cut and accepted the line item cuts imposed by the Old Bridge Township Council. The charge also alleges that the Board violated the Act when it stated to the media that the cuts would result in a reduction of any salary offer made at the bargaining table.

The Commission has delegated its authority to issue complaints to me and established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the charging party's allegations, if true, may constitute unfair practices within the meaning of the Act.^{2/} If this standard has not been met, I may decline to issue a complaint.^{3/}

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

The Board and Association are parties to a collective negotiations agreement effective from July 1, 1988 through June 30, 1991. The parties were engaged in negotiations for a successor agreement at the time the charge was filed.

According to the charge, on April 30, 1991 the Old Bridge voters defeated the proposed 1991-1992 school budget. In accordance with the New Jersey Administrative Code, the Board delivered the defeated budget to the Township Council, which decided to cut \$2

2/ N.J.A.C. 19:14-2.1.

3/ N.J.A.C. 19:14-2.3.

million from the Board's proposed budget, with all salary accounts reduced and with the rationale that the Board should reduce any salary offer to the Association.

The charge further alleges that on May 30 the Board decided to appeal only \$600,000 of the cuts and to leave intact many of the proposed cuts to the salary accounts. Finally, the Association claims that in explaining its action to the media the Board indicated that the cuts would result in a reduction of any salary offer made at the bargaining table. Appended to the charge is a photocopy of a newspaper article purportedly from the News Tribune, dated June 3, 1991, titled "Old Bridge Schools to Appeal".

Contained within this article is the paragraph:

"The council also lowered budgeted salary increases for teachers and other staff. Teachers' salaries are still being negotiated. The board included a 7.5 percent increase in the budget but has said it doesn't intend to give that large a raise. The council lowered the increase as part of its cuts."

N.J.S.A. 34:13A-5.4(a)(5) makes it an unfair practice for a public employer to refuse 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. Such a refusal also violates subsection 5.4(a)(1) derivatively by interfering with the protected right of collective negotiations through the exclusive majority representative. Here, the Association alleges that the Board failed to negotiate in good faith when it failed to appeal certain budget cuts and expressed to the media that it would not give as high an increase as was budgeted.

These facts, even if true, do not constitute bad faith negotiations.

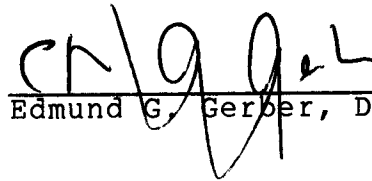
An employer violates subsection 5.4(a)(5) when its conduct during negotiations amounts to such bad faith as to undermine its duty to meet at reasonable times, to discuss, present and respond to proposals with the intention of reaching an agreement. No facts are presented here which show a failure or refusal to do any of these things. An employer may also violate subsection 5.4(a)(5) by surface bargaining, that is bargaining without a serious intent to reach agreement. Again there are no facts indicating that the Board has engaged in surface bargaining. Finally, the facts alleged here do not demonstrate that this Board has so committed itself elsewhere as to make meaningful negotiations impossible. The Board here might have violated the Act had it, through the budget process, so limited itself and its resources as to leave itself no discretion at the bargaining table with respect to salaries or other economic terms. That is not the case here.

The school budget process in this State requires boards of education to estimate labor costs before they know what those costs will be. The Board's conduct in the budget process did not so completely limit its independent action in negotiations so as to render negotiations meaningless. The budgeted amount for salaries is an estimate and the Board has discretion, within its total budget, to negotiate salaries that vary from this estimate. See City of Atlantic City v. Laezza, 80 N.J. 255 (1979) where the New

Jersey Supreme Court held that costs incurred to fund interest arbitration awards must take into account the Local Government Cap Law; such awards only establish level of benefits to be accorded employees. The governing body controls the amount of expenditures to implement interest arbitration awards by control of work force size and deployment. So to here. The size of a negotiated increase does not necessarily determine total expenditures.

Accordingly, I find the Commission's complaint issuance standards have not been met and dismiss this charge in its entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: August 9, 1991
Trenton, New Jersey