

H.E. NO. 93-27

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

In the Matter of

NATIONAL PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-92-236

NATIONAL PARK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the National Park Board of Education repudiated the preamble term of a memorandum of agreement by voting against the memorandum in the official public session vote and, thereby, violated section 5.4(a)(5) of the New Jersey Employer-Employee Relations Act. The memorandum contained a preamble term which required the signatories to recommend ratification.

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. 93-27

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

In the Matter of

NATIONAL PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-92-236

NATIONAL PARK EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Capehart & Scatchard, attorneys  
(Alan R. Schmoll, of counsel)

For the Charging Party, Freeman, Zeller & Bryant, attorneys  
(Allen S. Zeller, of counsel)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

On January 28, 1992, the National Park Education Association (Association) filed an unfair practice charge (C-3)<sup>1/</sup> with the Public Employment Relations Commission (Commission) against the National Park Board of Education (Board). The Association alleges that the Board violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., specifically

---

<sup>1/</sup> Exhibits received in evidence marked as "C" refer to Commission exhibits and those marked "J" refer to exhibits submitted jointly by the parties. Transcript citation T-1 refers to the transcript developed on March 25, 1993 at page 1.

sections 5.4(a)(1), (5), (6) and (7)<sup>2/</sup> by failing to negotiate in good faith when the three Board member/signatories to a memorandum of agreement failed to vote in favor of ratification of the memorandum in contravention to its specific terms.

On August 10, 1992, the Director of Unfair Practices issued a Complaint and Notice of Hearing (C-1). On January 13, 1993, the Respondent filed an Answer (C-2) denying that it had violated the Act. A hearing was conducted on March 25, 1993, at the Commission's offices in Trenton, New Jersey. The parties were afforded the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. At the conclusion of the hearing, the parties waived oral argument and a briefing schedule was established which provided for the simultaneous submission of briefs on May 17, 1993. Neither party submitted a brief.

Upon the entire record, I make the following:

---

<sup>2/</sup> 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 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. (7) Violating any of the rules and regulations established by the Commission."

FINDINGS OF FACT

1. The parties stipulated that the Board is a public employer and the Association is a public employee representative within the meaning of the Act. (T9). The parties also stipulated that they had entered into a collective negotiations agreement covering the period July 1, 1988 through June 30, 1991 (T10). The parties stipulated that they conducted negotiations sessions on December 12, 1990, January 16, February 6, February 20, March 11, April 22, and May 6, 1991 (T10). A Notice of Impasse was filed on June 5, 1991 (T10). Post impasse negotiations sessions were conducted on October 28, November 19, and November 25, 1991. The November 19, 1991 session was conducted without the presence of a mediator. The November 25, 1991, mediation session concluded at 2 a.m. on November 26, 1991, with the execution of a memorandum of agreement (J-1, T10-T11). The parties stipulated that J-1 was subject to ratification by the full memberships of the Association and the Board in accordance with their respective voting procedures (T13-T14).

2. Donna Maurer, NJEA negotiations consultant, Marilyn DiLorenzo, Association president, Barbara Caffrey, Trudy Randazzo and Connie Gentile attended the November 25 mediation session on behalf of the Association (T23-T24). Steve Duncan, Wilma Gismondi and Linda Banks attended the session on behalf of the Board (T66). The respective negotiations teams did not meet face to face during the mediation session, only the mediator and the chief spokespersons for each side met together (T29).

3. Shortly after 11 p.m. on November 25, 1991, the Association's negotiations team caucused. At the end of the caucus, the Association modified its position and gave the mediator its "bottom line" proposal to present to the Board. After an approximately two hour meeting with the Board, the mediator returned to the Association and advised that a tentative agreement had been achieved.

4. The mediator drafted J-1. The preamble to J-1 stated: "The parties agree to recommend the following for ratification[.]" J-1 was signed by Duncan, Banks, and Gismondi for the Board and DiLorenzo, Gentile, Caffrey, and Randazzo for the Association.

5. The Board's and the Association's negotiations teams understood that they did not bind their respective principals by signing J-1. By the express terms of J-1, the ground rules jointly established by the parties during the initial negotiations session and the parties prior negotiations experience, it was clear to both parties that by signing J-1, their respective principals were not bound by the terms set forth in the memorandum of agreement (T34; T39; T40; T66-T68; T77-T78).

6. The mediator told the signatories to the memorandum of agreement that by signing it, they agreed to support the terms of the agreement before their constituencies and would work toward its ratification. Accordingly, the signatories recognized their responsibility to present J-1 to their respective principals and to try to convince them to vote in favor of its ratification (T32-T33; T54-T55; T66; T68; T77).

7. On December 10, 1991, the members of the Association ratified the terms and conditions set forth in J-1 (T58-T59). Association President DiLorenzo immediately sent a letter to the Board advising that the Association had ratified the memorandum of agreement (J3).

8. A regular meeting of the Board was convened on December 12, 1991. One of the agenda items was the consideration of the memorandum of agreement (J4). The Board met in executive session to discuss the memorandum. Board member Wilma Gismondi led the discussion on behalf of the three Board members who signed the memorandum (T69; T79). The discussion concerning the memorandum went on for thirty-five to forty minutes. Gismondi urged the members of the Board to support the memorandum and vote in favor of its ratification. Gismondi and Banks told the other Board members that the memorandum reflected the best that they could do in the negotiations (T72; J5). Banks and Duncan supported Gismondi's position urging support of the memorandum (T74; T80-T81). Board members who were not part of the negotiations team expressed vehement opposition to the memorandum (T80). Finally, in order to conclude further discussion of the memorandum, it was suggested that the Board conduct a "straw vote" in the executive session to clearly identify the Board's position. The Board members understood that the "straw vote" did not serve as an official vote of the Board (T70; T86). The official Board vote occurred during the public portion of the meeting (T70; T86). Only Gismondi, Banks and Duncan

cast their straw votes in favor of ratifying the memorandum during the balloting conducted in the executive session (T71-T72; T82; J5). The six other Board members casting straw votes voted against ratification of the memorandum (T71-T73; J5). The six Board members who cast straw votes against ratification of the memorandum also planned to vote against the memorandum during the open public session official vote (T73).

9. After the straw vote, in reaction to the teachers' show of uniformity during the course of negotiations, Board member Hudnall recommended that the Board demonstrate its resolve by unanimously voting against the memorandum of agreement in the official public session vote (T69; T82; J5). As a result, all nine of the Board members voted against ratification of the memorandum in the official public session vote (T70-T71; T86-T87; J4). On December 13, 1991, Board President Maska advised Association President DiLorenzo that the Board had unanimously voted to reject the memorandum of agreement (J2).

#### ANALYSIS

The issue presented in this case was addressed in Borough of Somerville, H.E. No. 93-10, 18 NJPER 486 (¶23222 1992) adopted P.E.R.C. No. 93-35, 19 NJPER 1 (¶24000 1992). In Borough of Somerville, the Hearing Examiner stated the following:

The Commission has previously addressed a matter factually similar to this case. In Lower Tp. Bd. of Ed., P.E.R.C. No. 78-32, 4 NJPER 24 (¶4013 1977), the parties engaged in negotiations

pursuant to a reopener provision in their then current agreement. Negotiations were conducted and the parties reached a tentative agreement, subject to ratification, on an 8% salary increase. A dispute arose over whether, at the top of each salary guide, there should appear formulae which specify the amount by which each particular guide was increased. There was a complete meeting of the minds with respect to all aspects of the salary increase. The dispute was limited to the sole issue of whether or not the formulae used to arrive at each guide should be shown. 4 NJPER at 26. The Commission found that the parties' representatives agreed in the memorandum of agreement to show the computation formulae on the newly negotiated salary guides.

The memorandum of agreement reached on the salary increase stated that it was subject to ratification and that the signatories to the agreement would recommend its acceptance to their respective principals. Accordingly, under the terms of this agreement, the Lower Township Board's negotiations team representatives were under an obligation to present the memorandum to the full board for ratification and to recommend its acceptance. The Commission found that the board, through its negotiations team representatives who also served as board members, violated Section 5.4(a)(5) of the Act in two ways. First, by not showing the computation formulae on the top of the salary guide, the memorandum of agreement was not presented in the form in which it had been negotiated to the full board for ratification. Second, the board members who participated in the negotiations did not vote in favor of the negotiated memorandum of agreement but rather voted for the acceptance of the salary guides only to the extent that they accurately represented the monetary amounts which the parties had tentatively agreed to in the memorandum. [18 NJPER at 488.]

As in Borough of Somerville, no issue here exists concerning any alteration in the form of the negotiated memorandum of agreement. The Board's negotiations team presented the memorandum of agreement to the full Board for its consideration



precisely as it was drafted. However, also like Borough of Somerville, by failing to vote in favor of the ratification of the memorandum during the official public meeting vote, the Board's signatories, and, consequently, the Board, repudiated the preamble term of the memorandum in violation of section 5.4(a)(5) of the Act. However, since the memorandum of agreement contained the express reservation that the tentative agreement was subject to ratification by the principals of both parties, the failure of a majority of the Board who were not signatories to the memorandum of agreement to vote in favor of its ratification, does not constitute a violation of the Act. Borough of Somerville, 18 NJPER at 488.

I find no facts that support the Association's contentions that the Board refused to reduce a negotiated agreement to writing and to sign such agreement, or that the Board violated any of the rules and regulations established by the Commission.

Accordingly, based upon the entire record and the above analysis, I make the following:

#### CONCLUSIONS OF LAW

1. The Board violated N.J.S.A. 34:13A-5.4(a)(5) and, derivatively, (1) when the signatories to the memorandum of agreement repudiated the preamble term by failing to vote in favor of the ratification of the memorandum of agreement during the official public session vote.

2. The Board did not violate section 5.4(a)(6) or (7) of the Act.

REMEDY

The parties stipulated that in late June or early July, 1992, they conducted further negotiations sessions which resulted in the negotiations teams drafting and signing another memorandum of agreement which, as of the date of hearing, remains unratified (T14). Neither party has taken steps to ratify this second memorandum of agreement because of a dispute concerning the development of salary guides. This dispute is unrelated to the instant unfair practice charge. Consequently, I find that an order for further negotiations at this time would be unproductive. Additionally, I do not ignore the good faith effort on the part of the Board's signatories to recommend the ratification of the memorandum to the other Board members during the executive session. Consequently, I do not believe that a posting in this case would further effectuate the policies of the Act.

Accordingly, I make the following:

RECOMMENDATIONS

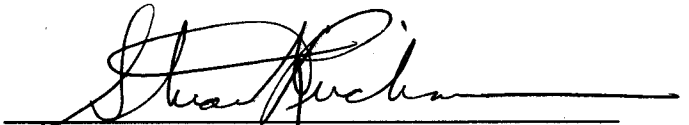
I recommend that the Commission **ORDER**:

A. The Board cease and desist from:

1. Interfering with restraining or coercing employees in the exercise of their rights under the Act and from refusing to negotiate in good faith by failing to abide by the negotiated preamble term of the memorandum of agreement executed by the parties.

B. The Board take the following affirmative action:

1. The signatories to all future memoranda of agreement which call for such signatories to recommend the memoranda for ratification will abide by the terms of the memoranda by recommending and voting in favor of the memoranda in the official vote.



---

Stuart Reichman  
Hearing Examiner

DATE: June 2, 1993  
Trenton, New Jersey