

D.U.P. NO. 86-22

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

In the Matter of

ROSELLE PARK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-86-271

ROSELLE PARK EDUCATION ASSOCIATION,

Charging Party.

Synopsis

The Director of Unfair Practices declines to issue a complaint with respect to allegations of refusal to negotiate filed by the Charging Party against Roselle Park Board of Education. The Charging Party argued that the Board was obligated to negotiate over distribution of residual monies received by the Board as a result of the implementation of N.J.S.A. 18A:29-5, et. seq., the Teacher Quality Employment Act ("TQEA"). The Director found that the Legislature's specific admonition that nothing shall require the reopening of contracts in the 1985-86 school year effectively preempted the employer's duty to discuss distribution (in 1985-86 only) of the residual monies received.

Further, consistent with his previous decision in Clark Board of Education and Clark Education Association, D.U.P. No. 86-16, and the companion cases issued on June 5, 1986, the Director also refused to issue a complaint with regard to the Board's unilateral modification of salary guides in compliance with the TQEA.

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Appearances:

For the Respondent

Pachman and Glickman, Esqs.  
(Steven S. Glickman, of counsel)

For the Charging Party

New Jersey Education Association  
(Ronald Harvey, UniServ Representative)

REFUSAL TO ISSUE COMPLAINT

On March 26, 1986, the Roselle Park Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Roselle Park Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(5) and (7)<sup>1/</sup>, when it unilaterally

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment

altered the negotiated 1985-86 salary guide and when it refused to discuss allocation of approximately \$30,000 in residual monies received by the Board. The charge also alleges that the Board did not "fully allocate for teachers' salaries in 1985-86 all of the monies agreed to in negotiations for 1985-86 teachers' salaries."

N.J.S.A. 34:13A-5.4(c) states in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge.<sup>2/</sup> The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The Commission rules further provide that when this standard has not been met I may decline to issue a complaint.<sup>3/</sup>

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1/ Footnote Continued From Previous Page

of employees in that unit, or refusing to process grievances presented by the majority representative; (7) Violating any of the rules and regulations established by the Commission."

2/ N.J.S.A. 34:13A-5.4(c) states: "The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof...."

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

The Association's argument is twofold. First, it maintains that the Board in effect reduced the salary differentials on the negotiated salary guide when it implemented salary increases in accordance with the Teacher Quality Employment Act, N.J.S.A. 18A:29-5 et seq. ("TQEA"). It is alleged that this action constituted a "unilateral alteration" of the 1985-86 negotiated salary guide in violation of subsection 5.4(a)(5) and (a)(7) of the Act. The Board denies committing a violation.

On June 5, 1986, I issued In re Clark Board of Education and Clark Education Association, D.U.P. No. 86-16. The Association here alleges essentially the same facts with regard to the Board's unilateral modification of the salary guide as the Association in Clark, where we stated in pertinent part:

On September 9, 1985, the Legislature enacted N.J.S.A. 18A:29-5 to "establish a minimum salary for teaching staff members and provide funding for salaries...." The TQEA states that, "the minimum salary of a full-time teaching staff member in any school district...shall be \$18,500..." N.J.S.A. 18A:29-5, as amended by L. 1985 c. 321 §3. The legislation also states that, "Nothing in the act shall be construed to require the reopening of any signed contract in effect for the 1985-86 school year", N.J.S.A. 18A:29-5. Similarly, the TQEA further prohibits recomputing salary guides which are indexed to a ratio between the minimum salary and all other ranges.

In State v. State Supervisory Employees Association, 78 N.J. 54 (1978), the Court delineated certain statutory requirements concerning negotiable terms and conditions of employment. The Court stated:

...the adoption of any specific statute or regulation setting or controlling a particular term or condition of employment will preempt any inconsistent provision of

a negotiated agreement governing that previously unregulated matter. In short, the parties must negotiate upon and are free to agree to proposals governing any terms and conditions of public employment which have not been set, and thus preempted, by specific statutes or regulations. 78 N.J. at 81.

The Court also declared non-negotiable all proposals which affect rights established by "mandatory" or "imperative" statutes (i.e., "those enactments which set up a particular scheme which 'shall' be handled as directed.") Id at 81-82.

From both a literal and contextual reading (in light of State Supervisory Employees Association) of the TQEA, I determine that the Legislature's setting of a minimum salary for teachers and its specific admonition that nothing shall require the reopening of signed contracts in effect for 1985-86, preempt the employer's duty to negotiate concerning those affected terms and conditions of employment. Specifically, employers are not required to negotiate changes in salary guides of executed agreements where the changes resulted exclusively from the upgrading of teacher salaries to comply with the statute (TQEA). In this case, the Board did not unlawfully change any negotiated term and condition of employment of any teacher earning \$18,500 or more when it upgraded teacher salaries for 1985-86; it merely complied with the TQEA.

Accordingly, consistent with the decision in Clark, I decline to issue a complaint concerning the Charging Party's (a)(5) allegations with regard to the Board's unilateral modification of the 1985-86 salary guide.

The Association's second argument involves approximately \$30,000 in residual monies received by the Board in the 1985-86 school year and the Board's refusal to discuss allocation of these funds in 1985-86. Pursuant to the TQEA, Roselle Park received \$48,980 in funds from the State to compensate for additional amounts

needed to raise all teachers on the salary guide to a minimum of \$18,500. The State calculated these amounts, pursuant to the statute, based on the salary guide submitted for the 1984-85 school year. As a result of previously-negotiated incremental raises built into the salary guide for 1985-86, the funds received by the Board exceeded the amount actually needed in 1985-86 to bring the affected teachers up to \$18,500. Thus, in Roselle Park, this created a residual amount of approximately \$30,000.

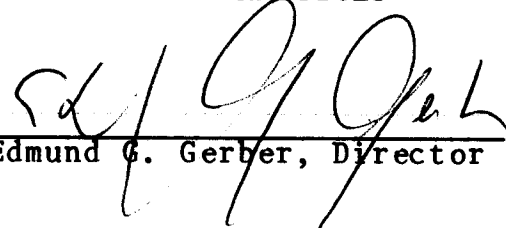
The Board argues that it is not obligated to negotiate with the Association over distribution of this residual money in the 1985-86 school year. It bases its argument on the above-quoted language of the TQEA which states that nothing shall be construed to require the reopening of a signed contract in effect for the 1985-86 school year.

After careful consideration, and consistent with the decision in Clark, I determine that the Legislature's specific direction that nothing shall require the reopening of a signed contract in effect for 1985-86, preempts the employer's duty to negotiate concerning those affected terms and conditions of employment. Thus, I find that the Roselle Park Board of Education is not obligated to discuss with the Association distribution of the residual monies received from the State for the 1985-86 school year. This determination is based on the express language of the statute which speaks only to the 1985-86 school year. Accordingly, nothing in this decision should be construed to comment on

distribution of residual monies for any years beyond 1985-86.<sup>4/</sup>  
That issue was not presented or considered in the instant charge.

Based on the foregoing, I decline to issue a complaint concerning the Charging Party's (a)(5) allegations regarding negotiation of distribution of the residual monies in the 1985-86 school year. I also decline to issue a complaint concerning the (a)(7) allegation because the Association offered no facts which could establish that the Board violated any of the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: June 18, 1986  
Trenton, New Jersey

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<sup>4/</sup> Similarly, this decision does not address what the Board is to do with these residual monies, but see Point Pleasant Beach Bd. of Ed. v. Point Pleasant Beach Ed. Assn., I.R. No. 86-20, 12 NJPER \_\_\_\_ (¶ 1986).