

H.E NO. 2004-6

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

In the Matter of

HUNTERDON CENTRAL REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2002-60

HUNTERDON CENTRAL REGIONAL HIGH SCHOOL  
EDUCATION ASSOCIATION,

Charging Party.

**SYNOPSIS**

A Hearing Examiner denies a Motion for Summary Judgement filed by the Hunterdon Central Regional High School Association. The Association alleged that no material disputed facts existed concerning the Board's payment of "relocation expenses" for certain newly hired teachers, without negotiations with the Association, in alleged violation of 5.4a(5) and 7. The Hearing Examiner found that genuine issues of material fact existed concerning the timeliness of the Association's unfair practice charge, as well as whether the Association had waived negotiations on the relocation stipend issue, as asserted by the Board. The Hearing Examiner ordered the commencement of a plenary hearing on the allegations of the Complaint.

H.E NO. 2004-6

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

In the Matter of

HUNTERDON CENTRAL REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2002-60

HUNTERDON CENTRAL REGIONAL HIGH SCHOOL  
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,  
James P. Granello, attorney

For the Charging Party,  
Klausner & Hunter, attorneys  
(Stephen B. Hunter, of counsel)

**DECISION ON MOTION FOR SUMMARY JUDGEMENT**

On August 31, 2001, and by amendment on October 19, 2001, the Hunterdon Central Regional High School Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission alleging that the Hunterdon Central Regional High School Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The charge alleges that in or around May 21, 2001, the Board unilaterally approved the payment of "relocation expenses" for certain newly hired teachers, without negotiations with the Association, in violation of 5.4a(5) and 7.

A Complaint and Notice of Hearing was issued on January 10, 2002. The Board filed an Answer to the Complaint on January 22, 2002. The Board admits that on May 21, 2001, it acted to provide Daniel Twisler, a mathematics teacher, a one-time "relocation stipend" of \$2000; and that on September 17, 2001, it approved the payment of one-time "signing stipends" of \$2000 to Donna Pickens and Maria Amorim; and that it denied the Association's grievance concerning the payment of relocation expenses filed on June 16 2001. The Board denied that the Association made a formal demand to negotiate relocation or signing stipends. As separate defenses, the Board further asserts in pertinent part that the October 19, 2001 amendment was untimely filed; that the Association's filing of the grievance or unfair practice charge did not constitute a demand to negotiate; that the Association waived its right to bargain concerning this topic; that the Association does not represent prospective employees who are not part of its bargaining unit.

Hearing dates set for March 26 and 27, 2002 were adjourned by mutual agreement pending the expected issuance of a factfinding report which the parties thought might address and resolve the issues. The issuance of the report did not resolve the issues. The Association advised of its intention to file a Motion for Summary Judgement. After an extension at the Association's request, the Association's Motion for Summary

Judgement and the Board's Brief in Opposition to the Motion were filed by November 14, 2002. The record on the Motion closed on that date. On September 25, 2003, the motion was assigned to me for consideration pursuant to N.J.A.C. 19:14-4.8(a). Based upon the entire record, I make the following:

**FINDINGS OF FACT**

I have reviewed both parties' briefs and supporting exhibits on the Association's Motion. The Association also presents the Affidavit of Vicki Fox, Association President. From those submissions, the following facts do not appear to be in dispute.

1. On May 21, 2001, at its public meeting, the Board of Education agreed to pay a \$2000 "relocation stipend" to Daniel Twisler, a newly hired mathematics teacher, such stipend to be payable on or about September 15, 2001.
2. Subsequently, the Association filed a grievance concerning the relocation stipend issue.
3. On August 31, and by amendment on October 19, 2001, the Association filed the within unfair practice charge.
4. At its meeting on September 17, 2001, the Board approved relocation stipends or signing bonuses for Donna Pickens and Marie Amorim in the amount of \$2000 each, payable September 15, 2001.
5. After entering into the Commission's impasse proceedings, the parties reached a successor collective

bargaining agreement on July 15, 2002. That agreement did not contain a resolution of the hiring stipend issue.

A dispute exists regarding the following matters:

1. The Association asserts that alleged conversations between Fox and Seitz and Huk and Granello constituted demands to negotiate concerning the relocation stipend/signing bonuses issue. The Board disputes that assertion, citing portions of the parties' collective agreement which set forth procedural requirements for the submission of negotiations proposals.

2. The Association also asserts that subsequent to the filing of the grievance and unfair practice charge on August 31, 2001, it was advised for the first time that the Board had paid a \$3000 "signing stipend" to a math teacher, Kyle Lynott, on or about June 19, 2000. The Board disputes that assertion.

#### **ANALYSIS**

N.J.A.C. 19:14-4.8(d) provides that a motion for summary judgment will be granted:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant . . . is entitled to its requested relief as a matter of law.

In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court enunciated the standard to determine whether a genuine issue of material fact precludes summary judgment. The factfinder must "consider whether the

competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 540. "While 'genuine' issues of material fact preclude the granting of summary judgment, . . . those that are 'of an insubstantial nature' do not." Id. at 530. If the disputed issue of fact can be resolved in only one way, it is not a "genuine issue" of material fact. Id. at 540.

Nevertheless, a motion for summary judgment should be granted cautiously. The procedure should not be used as a substitute for plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981) and N.J. Dept. of Human Services, P.E.R.C. No. 89-54, 14 NJPER 695 (¶19297 1988).

The Association argues that the issue of relocation stipends/signing bonuses is a mandatory subject of bargaining which the Board was obligated to negotiate with the Association prior to implementing such supplemental compensation. The Association further argues that if the Board's position in this matter is sustained, the Board will be able to render the collective bargaining agreement "a nullity" regarding salaries provided to teaching staff members, so that "(i)n this regard, the Board of Education at any time, under any circumstances, would be able to provide additional compensation to teaching

staff members when they were hired without having any contractual or statutory right to do so."

The Board opposes the Motion. It submits that material facts remain unresolved which prevent the grant of summary judgement, as follows: whether the alleged conversations between Association and Board representatives on May 21, 2001 constituted a demand for negotiations on the relocation expenses/signing stipend issue, and whether the prospective applicants were "bargaining unit members" within the terms of the parties' collective agreement when the offer to provide a relocation/signing stipend was made.

The Board further asserts that hiring stipends are not mandatorily negotiable, and that it had a managerial prerogative to provide such stipends in order to fulfill its obligation to provide qualified teachers in the areas of mathematics, science and world language. The Board argues that the Association waived or is time-barred from demanding negotiation of the hiring stipend issue.

I deny the Motion. While the facts concerning the Board's payment of relocation stipends to Twisler, Pickens and Amorim are undisputed, the record before me shows that several genuine issues of material fact still exist.

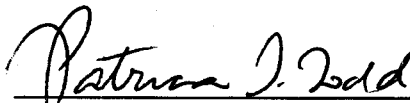
The record makes clear that the parties disagree about whether the Association made a timely demand for negotiations

concerning the relocation stipend issue. In fact, in both in its Answer to the Complaint and in its brief on the Motion, the Board disputes the Association's position that the alleged May 21, 2001 statements from Fox to Seitz and Huk to Granello constituted demands for negotiations by the Association.

Moreover, a genuine issue of material fact exists concerning when the Association learned or should have learned that a stipend was paid to Kyle Lynott in June 2000. I find that the determination of whether or when the Association became aware that Lynott had received a stipend is a material fact which is germane to any legal finding concerning whether the Association's unfair practice charge was timely filed, as well as whether the Association has waived negotiations on this issue, as asserted by the Board. See Brill.

#### **CONCLUSION**

Accordingly, the Association's motion for summary judgment is denied. Consequently, I hereby ORDER that a plenary hearing commence in this matter on November 19 and 20, 2003 at 9:30 A.M. in the Commission's offices in Trenton, New Jersey.

  
\_\_\_\_\_  
Patricia T. Todd  
Hearing Examiner

Dated: September 26, 2003  
Trenton, New Jersey