

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

In the Matter of

WEEHAWKEN BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-78-63

WEEHAWKEN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint for the purpose of litigating the sole issue of the propriety of awarding an interest remedy for professional employees whose increments were withheld by the Respondent during the pendency of negotiations. The instant Charge was filed during the pendency of Court proceedings in a related matter involving the issue of withholding increments. The Respondent, in the interim, agreed to the prospective and retroactive payment of increments in settlement of formal interim relief proceedings with respect to the Unfair Practice Charge. After the Supreme Court issued its decision in Galloway Township Board of Education, 78 N.J. 25 (1978), finding that the withholding of increments of professional employees pending negotiations was improper conduct, the Respondent in the instant Charge filed a statement with the Commission indicating that the Respondent's conduct would not be repeated in the future. The Director finds the issues similar to those involved in a previous determination, In re Union County Regional High School Board of Education, D.U.P. No. 79-23, 5 NJPER 158 (¶ 10099 1979), aff'd P.E.R.C. No. 79-90, 5 NJPER 229 (¶ 10126 1979). He concludes, similarly, that the harm to public rights occasioned by the nonpayment of interest on the wrongfully withheld increments is de minimis and does not warrant the issuance of a complaint solely for the purpose of litigating the request for an interest remedy.

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Appearances:

For the Respondent
LeRoy D. Safro, Esq.

For the Charging Party
Goldberg & Simon
(Gerald M. Goldberg, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 26, 1977, by the Weehawken Education Association (the "Association") against the Weehawken Board of Education (the "Board") alleging that the Board was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically, N.J.S.A. 34:13A-5.4(a)(1) and (5).^{1/} The

^{1/} These subsections prohibit employers, their representatives and 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."

Association alleged in its Charge that beginning September 1976, the Board altered the terms and conditions of employment of professional personnel by withholding increments from unit employees during negotiations toward a successor negotiations agreement. ^{2/}

Pursuant to a settlement of interim relief aspects of the Charge the Board, on December 5, 1977, agreed to fully pay the increments, both prospectively and retroactively. The increments were paid in the employees' December 14 and December 23 paychecks. Thereafter, the Charging Party advised the Commission of the Board's compliance with the terms of the settlement.

On February 2, 1978, the undersigned advised the parties of an Appellate Division decision, Galloway Township Board of Education v. Galloway Township Education Association, 149 N.J. Super. 352 (1977), decided March 29, 1977, which made questionable the propriety of issuing a complaint when negotiated agreement between the parties may have rendered the matter moot. The undersigned advised the parties that the further processing of the Charge would be held in abeyance pending the Supreme Court's disposition of petitions seeking certification to review the judgment of the Appellate Division.

On August 1, 1978, the Supreme Court reversed the Appellate Division in Galloway. See, 78 N.J. 25 (1978). On September 12, 1978, the parties were requested to review the Court's determination and to provide positional statements relating to the

^{2/} The previous agreement between the Board and the Association expired June 30, 1976.

further processing of the Charge. On October 17, the Association, noting the authority of the Commission to process the Charge "even after an agreement has been reached," requested further processing, and specifically reiterated a demand for interest attributable to withheld increments. ^{3/}

The undersigned advised the Board of the Association's position and requested that the Board provide a response. The Board, on January 12, 1979, provided a statement to the undersigned indicating the unlikelihood of recurrence of the Board's actions in light of the Supreme Court's disposition of the underlying issue in Galloway. The Association has been provided with a copy of the Board's response.

In a matter involving similar issues to those herein, i.e. related to a withholding of increments during negotiations,

^{3/} The Commission's standard for complaint issuance, N.J.A.C. 19:12-2.1, provides that a complaint shall issue "if it appears to the Director of Unfair Practices, that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal factual issues ... " (emphasis added) The Commission rules provide that the undersigned may decline to issue a complaint. N.J.A.C. 19:14-2.3. In this regard, the Court, in Galloway, at 78 N.J. 34 stated:

... The determination of whether a charge is sufficiently meritorious to warrant the issuance of a complaint is made by PERC's Director of Unfair Practices ... To this, point, PERC's role has been of a prosecutorial nature. (footnote omitted)

and also filed during the pendency of the Galloway proceedings, the undersigned has recently declined a request for complaint issuance. See, In re Union County Regional High School Board of Education, D.U.P. No. 79-23, 5 NJPER 158 (¶ 10088 1979), aff'd P.E.R.C. No. 79-90, 5 NJPER 229 (¶ 10126 1979). The undersigned, on the basis of the facts therein, found that there was minimal likelihood of recurrence of the aggrieved conduct by the Board of Education in the future and determined that litigation of the Charges for the purpose of securing a cease and desist order and a posting for the benefit of the employees was not appropriate. The undersigned further stated:

Accordingly, in the judgment of the undersigned the issue herein is whether formal proceedings in respect to the Charges should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues solely for the purpose of securing a remedy of interest. In this regard, the undersigned must give consideration, not only to the equities of providing a "make whole" remedy to individual employees, but to the public rights which are protected by the Commission under the unfair practice provisions of the Act. The undersigned concludes that the harm to public rights occasioned by the non-payment of interest on the alleged wrongfully withheld increments in this particular matter, is de minimis and does not warrant, in the discretion of the undersigned, the issuance of a complaint and the convening of an evidentiary hearing.

The undersigned has examined the issues relevant to the instant unfair practice proceeding and, as in the aforementioned Union County determination, reaches the same conclusion herein.

The Commission has not to date awarded a remedy of interest to a charging party. In light of the Board's affirmation to the undersigned as to its future conduct, with regard to the withholding of increments, the undersigned determines that litigation of the Charges for the purpose of securing a cease and desist order and a posting for the benefit of employees is not appropriate. The undersigned concludes that the harm to public rights occasioned by the nonpayment of interest on increments alleged to be wrongfully withheld for a period of three months is de minimis and does not warrant, in the discretion of the undersigned, the issuance of a complaint and the convening of an evidentiary hearing.

Accordingly, for the reasons stated above, the undersigned declines to issue a complaint with respect to the Unfair Practice Charge herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: June 29, 1979
Trenton, New Jersey