



STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TINTON FALLS BOARD OF
EDUCATION,

Respondent,

Docket No. CO-78-200-70

-and-

TINTON FALLS EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

An unfair practice charge was filed by the Tinton Falls Education Association against the Tinton Falls Board of Education alleging that the Board had violated the New Jersey Employer-Employee Relations Act. Specifically, the Association alleged that the Board had failed to abide by the terms of a Memorandum of Agreement between the parties relating to salary guides which were to be agreed upon for the 1977-78 and 1978-79 school years.

The Hearing Examiner, in his Recommended Report and Decision, concluded that the Board had not refused to negotiate in good faith with the Association, finding that the parties had failed to reach mutual agreement on salary guides for those two years as required by the Memorandum of Agreement. Exceptions to that Report were filed with the Commission by the Association and answered by the Board. Additionally, the parties appeared before the Commission to argue orally.

The Commission, after a review of the entire record including the exceptions and after hearing the parties' oral argument, concluded that the dispute arose not due to a failure to agree on salary guides, but rather on an earlier provision of the Memorandum of Agreement relating to the amount of money to be distributed to employees represented by the Association for the two years of the agreement. The Commission concluded that the language of the Memorandum indicated the agreement of the parties to construct a salary guide for 1977-78 based on the 1976-77 payroll and scattergram, i.e., distribution of teachers at various steps on the salary guide. It was the position of the Association that the agreement provided for a specific payout by the Board of Education to teachers employed by the Board of Education in 1977-78 and 1978-79 regardless of the number of teachers employed by the Board during those years. Because of the fact that there was a reduction in the number of teachers employed by the Board in 1977-78 from 1976-77, this position would have led to average

increases to teachers of 11% rather than the 7% increase which the Board maintained had been agreed to. The Board, on the other hand, took the position that the reference to the 1976-77 payroll clearly indicated the intention of the parties to utilize that year as the base year not only for purposes of projecting the payout, but also for purposes of constructing salary guides utilizing the 1976-77 scattergram.

The Commission concluded that the Association failed to prove by a preponderance of the evidence that the interpretation urged by the Association was that which was intended by the Memorandum of Agreement. Therefore, the Commission ordered the complaint dismissed in its entirety.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TINTON FALLS BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-78-200-70

TINTON FALLS EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Charging Party, Greenberg & Mellk, Esqs.
(Arnold M. Mellk and William S. Greenberg,
of Counsel)

For the Respondent, Gerald L. Dorf, P.A.
(Steven L. Glickman, of Counsel)

DECISION AND ORDER

The Tinton Falls Education Association (the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") on March 6, 1978, alleging that the Tinton Falls Board of Education (the "Board") violated the New Jersey Employer-Employee Relations Act (the "Act"). Alleged as the gravamen of the charge was that the Board failed to abide by the terms of a Memorandum of Agreement between the parties relating to the salary schedules to be agreed upon for the 1977-78 and 1978-79 school years in a collective negotiations contract, thereby violating N.J.S.A. 34:13A-5.4(a)(5) and (6).^{1/}

^{1/} This was later amended by deleting the (a)(6) charge and adding an alleged violation of subsection (a)(1).

It appearing that the allegations, if true, might constitute an unfair practice within the meaning of the Act, a Complaint was issued and a hearing was held before Commission Hearing Examiner Alan R. Howe.

The Hearing Examiner's Recommended Report and Decision issued on August 31, 1978, designated as H.E. No. 79-12. A copy is appended hereto and made a part hereof. Mr. Howe recommended that the Complaint be dismissed, finding that the only issue was the failure to reach mutual agreement on salary guides as required by the Memorandum of Agreement. There having been no mutual agreement and no showing of bad faith on the part of the Board, he concluded that no violation of the Act had been committed. Pursuant to N.J.A.C. 19:14-7.3 exceptions were filed with the Commission by the Association and answered by the Board. A motion for oral argument made by the Association pursuant to N.J.A.C. 19:14-8.2 was granted, and said argument was conducted on October 23, 1978 before the Commission.

Having reviewed the entire record, and given the parties' concurrence at oral argument, the issue to be resolved is not as stated by the Hearing Examiner. The Memorandum of Agreement, interpretation of which is the crux of the matter, reads in relevant part:

2. Salaries

a. Salary Guide for 1977-78 to be constructed by adding \$84,795 (7%) to 1976-77 salary of \$1,211,370.

b. Salary Guide for 1978-79 to be constructed by adding \$77,769 (6%) to 1977-78 salary: \$1,296,165.

c. Salary Guides to be mutually agreed upon.

What is actually in dispute is the proper interpretation of subparagraphs 2a and 2b, not a failure to agree on guides under 2c. Both parties agree that no agreement on guides has been reached.

Negotiations for a successor agreement commenced around the start of the 1976-77 school year and the Memorandum was not signed until October 24, 1977, i.e., during the 1977-78 school year. At that time the parties agreed to the above language but now present alternative interpretations of its import and their intent. The Association contends that items 2a and 2b require that the sum of \$1,296,165 (\$1,211,370 + \$84,795) be paid to teachers for 1977-78 and that \$1,373,934 (\$1,296,165 + \$77,769) would be paid out in 1978-79.

To the contrary, the Board maintains that those figures are to be used solely for the purpose of constructing salary guides and do not represent any commitment to actually pay those sums. Pointing out that the base dollar figure was the 1976-77 salary account, the Board argues that consistency requires that the 1976-77 teacher scattergram^{2/} be utilized for construction of the salary guide and only then would teachers included in the 1977-78 scattergram be placed on that guide.^{3/}

^{2/} As defined by the parties, a scattergram is a listing of the employees showing how many would fall on any particular category and step of a salary guide.

^{3/} Although this reading would result in an actual payout for raises of only about \$82,000, the Board states its willingness to accede to payment of the \$84,795 figure. The Board took this position, according to the testimony of the Superintendent, because it was arguable that the memo called for an increase of \$84,795. Both Dorf and Fanning testified, however, that they understood that the 1976-77 scattergram was to be used.

Due to the reduction in staff for 1977-78, testified to by Superintendent of Schools Fanning^{4/}, a payout of \$1,296,165 would represent raises of approximately \$140,000 (as opposed to \$84,795) if given to those teachers on the 1977-78 scattergram, an average raise above 11%. That does not square with the reference to 7% which appears in subparagraph 2a, and substantiates the Board's interpretation.

Also supporting the Board's position is the language of the Memorandum. It says that the salary guide is "to be constructed by adding \$84,795..." (emphasis added). It does not say that \$1,296,165 will be distributed regardless of any changes in the number or educational level of teachers in the Board's employ during that period. Furthermore, that this was the initial understanding of the Association is evidenced by Exhibit R-1 which was a salary guide prepared by the Association and submitted to the Board at the December 8, 1977 meeting. This guide utilized the 1976-77 scattergram as its base. It was only later that the Association presented salary guides utilizing the 1977-78 scattergram and providing for a payout of \$1,296,165.

In his report the Hearing Examiner rejected testimony that there had been agreement on a \$1,000 per teacher maximum raise. We agree with him on that score, but find it insignificant in light of numerous other references in testimony and in the exhibits to the Board having contemplated average raises of approximately 7% -- this figure does appear in the memo -- or \$1,000 per teacher when it negotiated and signed the Memorandum of Agreement. Although in its exceptions the Association relies on the finding

^{4/} Tr. June 12, 1978, p. 122.

of fact that on December 8, 1977 a scattergram containing names and salaries was agreed upon, we believe that it shows no more than that the parties were in agreement as to who was on the 1977-78 payroll, thereby to be paid according to the salary guide that remained to be constructed. It does not establish the base scattergram to be utilized in the construction process.

In order to construct a salary guide, several elements are indispensable when the negotiated increase is expressed in dollar terms as is the instant one. The amount of the increase must be agreed upon. In this case, the parties agreed upon \$84,795 (7% of the 1976-77 payroll) for 1977-78 and \$77,769 (6% of the 1977-78 payroll) for 1978-79. But, contrary to the Association's position herein, this alone is not enough. It also must be determined who is to receive this increase.

We are satisfied that, given the language of the disputed memo, the parties' intention was to base the increase on the 1976-77 scattergram. Several factors lead to this conclusion. First, negotiations began over a year before the memo was signed. During that time, the parties could only have known how many teachers were employed in 1976-77. Second, the 1977-78 percentage increase is based upon the 1976-77 payroll which in turn reflects the 1976-77 scattergram. There would have been no reason for the parties to have referred to the 1976-77 salary or to 7% unless they intended to use that year as the base. Third, the only way that the parties could construct a salary guide for 1978-79 was to utilize a common base. The memo was geared to the 1976-77

salary and this permits construction of guides for both 1977-78 and 1978-79 as called for by the memo. While the Association argues that the 1977-78 guide should be constructed using the 1977-78 scattergram, it does not argue that the 1978-79 guide should be constructed using the 1978-79 scattergram. Yet this would be the only consistent way to construct that guide, if the Association's position were to be accepted. Consistent herewith, not only did the Association prepare a guide (R-1) based on the 1976-77 scattergram, but it also prepared salary guides for both years.

At best, the Association can demonstrate that the memo is ambiguous in that it does not explicitly state the base or number of teachers to be used in constructing the guides.^{5/}

This entire controversy would not have arisen had there been no change in personnel from 1976-77 to 1977-78. But when there were fewer unit members in 1977-78, the Association sought to gain a windfall by compelling the Board to pay out the same number of dollars to 1977-78 unit members as it would have paid out to 1976-77 unit members. Obviously, this would be to the Association's advantage because fewer people would be sharing the same number of dollars. Of course, if the district had increased the number of teachers, the Association's position would result in unit members receiving less than the average 7% increase each

^{5/} As stated above, we believe that the memo's reference to the 1976-77 salary and the fact that the memo was for two years established an intention to utilize the 1976-77 scattergram for purposes of constructing the guides for 1977-78 and 1978-79. Of course, the Association does not argue that the memo is ambiguous because to do so would destroy its case.

because now more teachers would have to divide the same number of dollars. It is for this reason that a fixed base is essential.

In short, the Association, which has the burden of proving its charge by a preponderance of the evidence, has failed to meet that burden.

Consistent with this decision, we expect the parties to undertake to agree upon salary guides for 1977-78 and 1978-79 using the 1976-77 scattergram and the increases agreed to, i.e., \$84,795 in 1977-78 and \$77,769 in 1978-79 unless the parties mutually agree otherwise.^{6/}

ORDER

Based upon the entire record and for the above-stated reasons, the Complaint herein is dismissed in its entirety.

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Schwartz abstained.

DATED: Trenton, New Jersey
November 14, 1978
ISSUED: November 14, 1978

^{6/} Again we note that the Board has expressed a willingness to negotiate a 1977-78 guide which contains increases of \$84,795 for teachers employed in 1977-78 even though this results in a payout to the Board slightly in excess of that which would result by using the 1976-77 scattergram.

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

In the Matter of

TINTON FALLS BOARD OF EDUCATION,
Respondent,

- and -

Docket No. CO-78-200-70

TINTON FALLS EDUCATION ASSOCIATION,
Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed by the Association, which alleged that the Board refuse to negotiate in good faith when it failed to agree on salary guides for the 1977-78 and 1978-79 school years. The parties had executed a Memorandum of Agreement on October 24, 1977 for a two-year contract, one paragraph of which provided that salary guides were to be mutually agreed upon. The Association at the hearing devoted a great deal of time and effort in trying to establish that the Board was guilty of bad faith when it refused to agree to salary guides proposed by the Association.

Both parties relied upon the Commission's decision in Mount Olive Township Board of Education, P.E.R.C. No. 78-25, 3 NJPER 383 (1977) wherein the Commission found that there was no "meeting of the minds" in connection with a disputed paragraph of a Memorandum of Agreement. The Hearing Examiner here distinguished Mount Olive inasmuch as there was no absence of "meeting of the minds" in connection with the Memorandum of Agreement of October 24, 1977. The parties did in fact reach a mutual agreement as to salaries for the two-year contract, it remaining only to have a "mutual agreement" with respect to the salary guide for the two years. The Hearing Examiner found that the parties had not reached such a mutual agreement as required by the Memorandum of Agreement and therefore recommended dismissal of the complaint.

A Hearing Examiner's Recommended Report and Decision is not a final administrative action 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.

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

In the Matter of

TINTON FALLS BOARD OF EDUCATION,
Respondent,

- and -

Docket No. CO-78-200-70

TINTON FALLS EDUCATION ASSOCIATION,
Charging Party.

Appearances:

For the Tinton Falls Board of Education
Gerald L. Dorf, P.A.
(Steven S. Glickman, Esq.)

For the Tinton Falls Education Association
Greenberg & Mellk, Esqs.
(Arnold M. Mellk, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 6, 1978 by the Tinton Falls Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Tinton Falls Board of Education (hereinafter the "Respondent" or the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent, notwithstanding a Memorandum of Agreement dated October 24, 1977, had failed to abide by the terms of said Memorandum of Agreement, in particular, paragraph 2a-c, which pertained to the amount of the salary increase for 1977-78 and 1978-79, and that the Respondent on March 1, 1978 advised the Association that it would not honor the Memorandum of Agreement, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(5) and (6). ^{1/}

1/ These Subsections prohibit 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 of employees in that unit, or refusing to process grievances presented by the majority representative.
(continued next page)

It appearing that the allegations of the Unfair Practice Charge, as amended at the first hearing, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 9, 1978. Pursuant to the Complaint and Notice of Hearing, hearings were held on June 12 and June 29, 1978 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Post-hearing briefs were received from the parties under date of August 21, 1978.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and consideration of the briefs filed by the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Tinton Falls Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Tinton Falls Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. The Board and the Association have had a longstanding collective negotiations relationship and, in particular, negotiations for a successor agreement for the school year 1977-78 commenced in August 1976.
4. Under date of October 24, 1977, duly authorized representatives of the Board and the Association executed a Memorandum of Agreement for a two-year contract for 1977-78 and 1978-79. This Memorandum of Agreement provided in paragraph 2, Salaries, as follows:

"a. Salary Guide for 1977-78 to be constructed by adding \$84,795 (7%) to 1976-77 salary of \$1,211,370.

1/ (continued)

"(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

At the first hearing on June 12, 1978, the Charging Party amended its charge of unfair practices to delete the alleged violation of Subsection (a)(6) and to substitute in its place an alleged violation of Subsection (a)(1) of the Act, which provides:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

"b. Salary Guide for 1978-79 by adding \$77,769 (6%) to 1977-78 salary: \$1,296,165.

"c. Salary Guides to be mutually agreed upon."

(CP-1) (Emphasis supplied).

5. The Association ratified the aforesaid Memorandum of Agreement on December 9, 1977 and the Board ratified it on December 14, 1977.

6. At a December 8, 1977 meeting of representatives of the Association and the Board, the Association representatives presented a proposed Salary Guide for 1977-78 and 1978-79 (R-1). A "scattergram", containing the names of teachers employed by the Board, together with their salary, was agreed upon and Dr. John Fanning, the Superintendent, stated the Board's conditions and disagreements with respect to the proposed Salary Guide of the Association. It was the Board's position: (1) that a starting salary of \$10,000 per year be set forth; (2) that there be an evening out of the steps in the Salary Guide; and (3) that an equitable distribution of the dollar increase for the first year (\$84,795) be made. There was no further discussion beyond the foregoing. Specifically, there was no discussion of the proposed Salary Guide (R-1) on the merits.

7. It was the Board's position at the hearing in this matter that its offer of salary increase per teacher on October 24, 1977 was limited to a maximum of \$1,000, that being the closest dollar approximation to 7%. This was not set forth in the Memorandum of Agreement of October 24, 1977 and the Association never concurred with the contention of the Board that this had been incorporated in the offer of settlement.

8. The Charging Party in January 1978 submitted to the Board a revised proposed Salary Guide for 1977-78 (CP-4) and subsequently submitted to the Board a revised proposed Salary Guide for 1978-79 (CP-5). Notwithstanding a conference telephone call thereafter between the parties, and a meeting on February 8, 1978, mutual agreement was never reached by the parties with respect to the proposed Salary Guides (R-1, CP-4 and CP-5).

9. No evidence was adduced at the hearing by the Association that the Board, by its Superintendent, on March 1, 1978 refused to honor the Memorandum of Agreement.

10. The sole dispute between the parties, based on the record developed at the hearings in this matter, pertains to the question of whether or not there was mutual agreement on the Salary Guides as provided for in paragraph 2c of the Memorandum of Agreement dated October 24, 1977.

THE ISSUE

Did the Respondent Board violate Subsections (a)(1) and (5) of the Act when it failed to reach mutual agreement with the Association on the Salary Guides for 1977-78 and 1978-79, as set forth in the Memorandum of Agreement of October 24, 1977?

DISCUSSION AND ANALYSIS

Positions of the Parties

At the conclusion of the hearing on June 29, 1978, the Hearing Examiner requested that both parties brief their interpretation of the meaning of paragraph 2c of the Memorandum of Agreement with respect to the requirement that there be mutual agreement with respect to salary guides.

The Association cites in its brief numerous cases, and Corbin on Contracts, in support of its contention that the Respondent Board violated the Act by failing and refusing to implement agreed upon Salary Guides and the increases which were negotiated for 1977-78 and 1978-79. The Association notes that there is no provision in the Memorandum of Agreement limiting the raise per teacher to 7% or to \$1,000, nor that the Salary Guide be based upon the 1976-77 payroll. The Association position is that paragraph 2c merely provides the mechanism by which paragraphs 2a and 2b are to be implemented, omitting the hard question as to what mutual agreement means in paragraph 2c. The Charging Party submits that the Commission's decision in Mount Olive Township Board of Education, P.E.R.C. No. 78-25, 3 NJPER 382 (1977) supports its position in this case that a violation has occurred herein.

The Respondent Board states the issue as to whether or not it violated Subsections (a)(1) and (5) because it was unable, through collective negotiations with the Charging Party, to reach mutual agreement on a Salary Guide for the 1977-78 school year. The statement of the issue by the Respondent Board comports with that stated by the Hearing Examiner under his statement of the issue above. The Respondent urges that it has not violated the Act, pointing out that the totality of its conduct in negotiations has been one of good faith and an honest effort to reach an agreement over salary guides. It, too, cites Mount Olive Township Board of Education, supra, as supporting its position that there has been no "meeting of the minds" with respect to mutual agreement upon salary guide, as provided for in paragraph 2c of the Memorandum of Agreement, dated October 24, 1977.

The Respondent Board Did Not Violate
Subsections (a)(1) and (5) of the Act
Inasmuch as There Has Been No Mutual
Agreement on Salary Guides for Either
the 1977-78 or 1978-79 School Years

A disposition of the instant charge of unfair practices necessarily turns on the interpretation to be given to paragraph 2c of the Memorandum of Agreement of October 24, 1977. There is no dispute whatsoever that the Board and the Association agreed on the numbers of dollars by which teachers salaries were to be increased for the years 1977-78 and 1978-79. The dollar amounts are respectively set forth in paragraphs 2a and 2b of the Memorandum of Agreement; further, the percentages of increase which these dollars reflected is specifically set forth, namely a 7% increase for the first year and a 6% increase for the second year.

The Hearing Examiner does not accept the contention by the Respondent Board that there was a \$1,000 limitation for any one teacher in each of the respective years. There is nothing to this effect to be found in the Memorandum of Agreement and the Hearing Examiner is unwilling to credit the testimony of Mr. Dorf that this was part of the Board's proposal on salaries for the respective school years. Mr. Dorf drafted the Memorandum of Agreement and, if the agreement was for a \$1,000 limitation, then Mr. Dorf could have incorporated this limitation into the Memorandum of Agreement. However, this conclusion by the Hearing Examiner is of little assistance to the Association in prevailing in the instant case on the charges filed and the record developed at the hearing.

The Charging Party's problem in the instant case is its "boot strap" argument that because there were specific dollar amounts agreed to for the respective school years of 1977-78 and 1978-79 that this somehow surmounts the problem of proof that salary guides based on these amounts were in fact mutually agreed upon. It is the conclusion of the Hearing Examiner that the Charging Party has failed in burden of proof to establish by a preponderance of the evidence that salary guides were mutually agreed upon. Such a burden is required of the Charging party under N.J.A.C. 19:14-6.8.

The record does not establish that the Respondent Board failed to meet and negotiate in good faith with the Association with respect to the dispute over salary guides for the respective years involved. There was a meeting on December 8, 1977, a conference call early in 1978 and a meeting on February 8, 1978, all of which were devoted to and concerned the efforts of the parties to resolve their outstanding difference over the salary guides for the years 1977-78 and 1978-79. The Association adduced no evidence of bad faith on the part of the Respondent Board in the course of conduct of the parties since the Memorandum of Agreement of

October 24, 1977. The Hearing Examiner notes that both parties ratified the Memorandum of Agreement in December 1977. Even before ratification by the Board on December 14, 1977, its representatives met with representatives of the Association on the salary guide problem on December 8, 1977. Thereafter there was a conference call, as noted previously, and a meeting of the parties on February 8, 1978. There were no further meetings after that date and the charge of unfair practices was filed on March 6, 1978. As noted previously, the Hearing Examiner finds that the Association adduced no evidence that the Superintendent of the Board informed the Association on March 1, 1978 that the Board would not honor the Memorandum of Agreement.

With respect to the fact that both parties cite Mount Olive Township Board of Education, supra, the Hearing Examiner notes that that case turned on the absence of a "meeting of the minds" on what had been agreed to between the parties in a memo of agreement. In the instant case, it is not a matter of the absence of a meeting of the minds with respect to the Memorandum of Agreement of October 24, 1977. Rather it is the fact that there has been no compliance by the parties with the mandate of paragraph 2c of the Memorandum of Agreement that there be mutual agreement with respect to salary guides. The Hearing Examiner finds that in the instant case there has been a complete meeting of the minds with respect to the meaning and intent of paragraph 2a-c of the Memorandum of Agreement, but the problem remains that paragraph 2c requires mutual agreement and there has been no such mutual agreement.

In conclusion, the Hearing Examiner can only observe that the parties, under the October 24, 1977 Memorandum of Agreement, are obligated to negotiate and mutually agree upon salary guides for the 1977-78 and 1978-79 school years. No charge of unfair practices can be founded upon the failure to reach mutual agreement on salary guides unless one or the other of the parties can establish that the opposite party is proceeding in bad faith. The parties may well require the assistance of a mediator in attempting to reach agreement. There are adequate procedures available under the Rules and Regulations of the Commission for enlisting the services of a mediator.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) by reason of its failure to reach mutual agreement with the Charging Party on the salary guides for 1977-78 and 1978-79, as provided for in the Memorandum of Agreement dated October 24, 1977.

RECOMMENDED ORDER

The Respondent Board not having violated the Act, supra, it is HEREBY ORDERED that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

DATED: August 31, 1978
Trenton, New Jersey

