

I.R. NO. 86-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TEANECK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-90

TEANECK ASSOCIATION OF EDUCATIONAL
SECRETARIES, NJSFT, AFT/AFL-CIO,
LOCAL 4048,

Charging Party.

SYNOPSIS

A Commission Designee of the Public Employment Relations Commission declines to issue a temporary restraint against the Teaneck Board of Education in a matter brought by the Teaneck Association of Educational Secretaries ("AFT"). It was claimed by the AFT that the Board unilaterally implemented a tentative agreement which the union membership never had a chance to ratify. At the hearing, however, it appeared that the contract was ratified by both sides. Rather the dispute arose over the initiation of a salary guide that was negotiated after the agreement was entered into. No evidence was adduced which showed that the union had reserved the right to ratify the salary guide.

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Appearances:

For the Respondent
Gerald L. Dorf
(Lawrence Henderson of counsel)

For the Charging Party
Dwyer, Canellis & Bell
(John J. Janasie of counsel)

DECISION

On October 11, 1985 the Teaneck Association of Educational Secretaries, NJSFT, AFT/AFL-CIO, Local 4048 filed an Unfair Practice charge with the Public Employment Relations Commission ("Commission") against the Teaneck Board of Education ("Board") alleging that the Board violated Subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1

et seq. ("Act").^{1/} The Unfair Practice charge was accompanied by an Order to Show Cause. The Show Cause Order was signed and made returnable for October 16, 1985.

The Charging Party is the certified majority representative of educational secretaries employed by the Board and it was engaged in negotiations with the Board for a successor agreement. It was alleged that during the course of negotiations, there were two proposed salary guides. The first was rejected by the Association's negotiation team and the second was rejected by the membership in August of 1985. However, on or about October 9, 1985, the Board, at its regular meeting, voted to implement a salary guide for the unit represented by the Charging Party. On October 10, 1985, a representative of the union had been told that the Board in fact approved the disputed salary guide at its meeting.

It was also alleged that a member of the negotiating team, one Jean Zeleny, had a reference to her participation in negotiations placed in her evaluation.

^{1/} 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

On the return date of the Order to Show Cause, I heard oral argument of the parties, heard testimony by a union witness and moved certain documents into evidence. The Board had no witnesses nor did it submit any affidavits. All of its witnesses were at a convention and otherwise unavailable.

The grounds for the issuance of a restraint are well settled; the moving party must demonstrate that it has a substantial likelihood of success on the merits of the entire charge and there will be immediate and irreparable harm will ensue if the relief is not ordered. Both conditions must be met before interim relief will be granted.

Although I do not here decide whether the Charging Party might ultimately prevail on the merits of the Unfair Practice Charge before the full Commission, I am not satisfied that the heavy burden for the issuance of Interim Relief has been met. Accordingly, I have denied the instant application.

It is noted, however, that on the return date of the Show Cause Order, I did restrain the Board from implementing the new disputed salary guide. The proofs in this matter then showed only that a Memorandum of Understanding signed by the parties was subject to ratification by both sides and further the Association members voted down a salary increment proposal. Given the nature of the testimony, I gave the Board an opportunity to submit affidavits on its behalf. An affidavit was submitted and the affiant stated that

the Memorandum of Agreement entered into gave both sides the right to have its principles ratify the agreement. However, both sides ratified and subsequent to the ratification, the parties negotiated a salary guide in accordance with the agreement. The affiant stated that the Association did not reserve unto itself the right to have any schedule agreed to subject to ratification by its members.


This affidavit does raise a significant doubt as to whether the Charging Party will meet its burden of proof at a full plenary hearing.

The Commission has held:

....in determining whether or not an agreement is binding upon the parties or subject to ratification by the principles, will consider only whether, during the course of the particular negotiations in dispute, there was an absence of oral or written qualifying statements or general conduct by negotiating representatives from which binding authority on the part of the negotiating teams could be reasonably inferred. To consider the additional factor of past history of ratification would only cause confusion and disruption to the negotiating process. A party would be uncertain whether to rely on the practice of ratification in previous negotiations or the current representations of binding authority by the negotiating representatives.

Black Horse Pike Regional Board of Education and
Black Horse Pike Regional Education Association,
P.E.R.C. No. 78-83, 4 NJPER 249 (Para 4126 1978).

The Association's application for Interim Relief is denied.


Edmund G. Gerber
Commission Designee

DATED: November 8, 1985
Trenton, New Jersey