

H.E. NO. 87-11

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

In the Matter of

BOARD OF EDUCATION OF MORRIS COUNTY  
AREA TECHNICAL & VOCATIONAL SCHOOL  
DISTRICT,

Respondent,

-and-

Docket No. CO-86-131-93

MORRIS COUNTY TECHNICAL & VOCATIONAL  
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission denies Cross-Motions for Summary Judgment on the issue of whether or not the employer reached a Memorandum of Understanding wherein all teachers were to receive a 9% increase for the 1985-86 school year. There appeared to be a genuine issue as to a material fact involving the interpretation of the Memorandum of Understanding, which necessarily involved parol evidence.

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Appearances:

For the Respondent  
Green & Dzwilewski, Esqs.  
(Allan P. Dzwilewski, Esq.)

For the Charging Party  
Klausner & Hunter, Esqs.  
(Stephen B. Hunter, Esq.)

HEARING EXAMINER'S RECOMMENDED REPORT AND  
DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 26, 1985 by the Morris County Technical & Vocational Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Board of Education of Morris County Area Technical & Vocational School District (hereinafter the "Respondent" or the "Board") has 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 negotiations for a successor agreement, which expired on June 30, 1985, commenced in November 1984, after which representatives of the parties met on five occasions during the 1984-85 school year; when no agreement was reached, the parties jointly filed a Notice of Impasse on May 6, 1985, after which negotiations sessions continued with the assistance of a mediator on June 5 and June 13, 1985, and on September 17, 1985, without the assistance of a mediator; at a third mediation session on September 24, 1985, a Memorandum of Understanding was executed under date of September 25, 1985, subject to the ratification of the parties, which was thereafter ratified by the Association on September 26, 1985, and by the Board on October 8, 1985; the foregoing Memorandum of Understanding provided, in part, that "All employees will receive a 9% increase in the 1st yr. and 8.6% in the 2nd yr." and, also, that salary guides would be "mutually developed"; after which the Board prepared salary guides for the 1985-86 and 1986-87 school years, which were transmitted to the Association on October 7, 1985; the Association rejected the Board's guides since the first-year increase calculated to 8.3% instead of 9%; following which, on October 25, 1985, the parties executed a supplemental Memorandum of Agreement, which was ratified by both parties, and which referred the issue of interpretation of the original Memorandum of Agreement to the Commission, in particular, the first-year increase of 9%; and finally, alleging

that the Board refused to reduce a negotiated agreement to writing and to execute it, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (5) and (6) of the Act.<sup>1/</sup>

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on January 9, 1986, scheduling hearings for February 19 and February 20, 1986,. Before the scheduled hearings were held, counsel for the Charging Party advised the Hearing Examiner that he intended to file a Motion for Summary Judgment with the Chairman of the Commission, which filing occurred on April 30, 1986. No response having been received from the Respondent by July 11, 1986, the Chairman referred the motion to the undersigned pursuant to N.J.A.C. 19:14-4.8(a). In his referral letter of July 11th, the Chairman directed counsel for the Respondent to file any response within five days of receipt of the referral letter, accompanied by a Motion for Leave to File with supporting certification demonstrating good cause for failure to submit a timely response. The Respondent

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

filed a Cross-Motion for Summary Judgment with a brief and supporting papers in opposition to the Charging Party's motion on July 21, 1986, accompanied by a Motion for Leave to file, which demonstrated good cause for failure to have submitted an earlier timely response.

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Upon the record papers filed, supra, and upon the oral argument of the parties by telephone conference on July 30, 1986, the Hearing Examiner makes the following interim findings:

1. It appearing that the resolution of the instant dispute turns upon the interpretation of ¶6 of the Memorandum of Understanding entered into by the parties on September 25, 1985, in particular, whether, as urged by the Charging Party, a 9% salary increase was mandated for all teachers, exclusive of those teachers whose salaries were to be increased to \$18,500 by law, effective July 1, 1985, or whether, as contended by the Respondent, the language of ¶6 allowed for a lesser percentage increase, which was ultimately implemented by the Respondent at 8.8%; and

2. It appearing further that there is a latent ambiguity in the overall language of ¶6, supra, due to the insertion of two sentences at the end thereof, which in point of time occurred after the initial language was drafted, and which, if found to reflect the parties' true intent would appear to sustain the Unfair Practice Charge; and

3. It appearing that parol evidence would necessarily be required to divine the intent of the parties vis-a-vis ¶6, supra; and

4. It appearing that a genuine issue as to a material fact exists and that a plenary hearing is required to determine the proper interpretation to be placed upon ¶6, supra.

NOW THEREFORE:

It is hereby ORDERED that the Cross-Motions for Summary Judgment are denied and, further, that a plenary hearing shall be scheduled at the earliest possible date, and shall be limited to the question of whether all teachers, excluding those teachers whose salaries were to be increased to \$18,500 by law, are entitled to a 9% salary increase for the 1985-86 school year or to a lesser percentage increase.



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Alan R. Howe  
Hearing Examiner

Dated: August 6, 1986  
Trenton, New Jersey