

D.U.P. NO. 94-19

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

In the Matters of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-94-63

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION,

Charging Party,

-and-

Docket No. CE-94-4

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that the Middletown Township Board of Education committed an unfair practice by refusing to change its position on health care coverage in the course of negotiations. The Director also declines to issue a complaint on allegations that the Middletown Township Education Association committed an unfair practice by failing to properly communicate its ratification of a proposed agreement to the Board.

The Director finds that it would serve no purpose to process the charges in light of the parties' subsequent execution of a three-year agreement.

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Appearances:

For the Board of Education,
Kalac, Newman, Lavender & Campbell, attorneys
(Howard M. Newman, of counsel)

For the Education Association,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Kenneth I. Nowak, of counsel)

REFUSAL TO ISSUE COMPLAINT

On September 1, 1993, the Middletown Township Education Association filed an unfair practice charge with the Public Employment Relations Commission charging the Middletown Township

Board of Education with violating subsection 5.4(a) (1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Association alleges that the Board negotiated in bad faith by refusing to change its position on health insurance coverage in the course of negotiations.

On October 26, 1993, the Middletown Township Board of Education filed an unfair practice charge with the Commission charging the Middletown Township Education Association with violating subsection 5.4(b) (3)^{2/} of the Act, N.J.S.A. 34:13A-1 et seq. The Board alleges that the Association bargained in bad faith by failing to properly communicate its ratification of a proposed agreement.

The Association declared impasse in July, 1993. The Board's charge indicates that an agreement was reached through mediation in September, 1993 and that the Association promised the mediator that it would conduct a ratification vote during the week of September 12, 1993. The Board contends that it was not advised of the Association's ratification vote in a timely manner. The

^{1/} This subsection prohibits 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."

^{2/} This subsection prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

Board states that it attempted to learn the result of the Association's ratification vote before and during the September 28 1993, Board meeting. The Board states that it eventually halted the meeting and used the recess to determine that the Association had ratified the agreement on September 28, 1993. The Board then ratified the agreement that evening. The Board alleges that the Association's failure to abide by its promise to the mediator to conduct a ratification vote during the week of September 12, 1993 and the Association's failure to properly communicate its September 28, 1993 ratification constitutes an unfair labor practice.

On October 26, 1993, the Commission was informed that both parties have executed a three-year agreement. The parties have each declined to withdraw their respective charges.

I do not believe that continued processing of these charges would further the purposes of the Act. I also believe that the parties' having reached a three-year agreement renders both charges inappropriate for complaint issuance. In Ramapo-Indian Hills Education Association, Inc., P.E.R.C. No. 91-38, 16 NJPER 581 (¶21255 1990), the Commission concluded that:

We have often held that the successful completion of contract negotiations may make moot disputes over alleged misconduct during negotiations... Continued litigation over past allegations of misconduct which have no present effects unwisely

focuses the parties' attention on a divisive past rather than a cooperative future.^{3/} Under all the circumstances, this case does not warrant an exception to our reluctance to resurrect pre-contract negotiations disputes. (16 NJPER at 581, 582).

The Commission has found that continued litigation over past disputes would only ferment instability and hostility between the parties when labor stability and peace are most needed and has dismissed such cases as moot. Matawan.

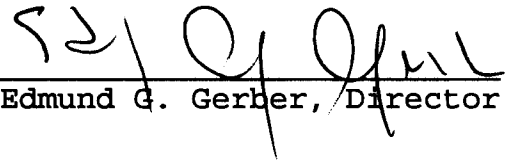
The parties' three-year contract, which includes a health insurance plan, demonstrates their ability to reach agreement on this issue. While the Board's allegations portray the Association as reluctant to reveal the result of its ratification vote, the signed agreement also demonstrates the parties' successful conclusion of the bargaining process. In light of the parties' three-year agreement, it would serve no purpose to process these charges.

^{3/} See, e.g., Bayonne Bd. of Ed., P.E.R.C. No. 89-118, 15 NJPER 287 (¶20127 1989), aff'd App. Div. Dkt. No. A-4871-88T, (3/5/90); Belleville Bd. of Ed., P.E.R.C. No. 88-66, 14 NJPER 128 (¶19049 1988), aff'd App. Div. Dkt. No. A-3021-87T7 (11/23/88); Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd App. Div. Dkt. Nos. A-46-87T1, A-2433-87T1, A-2536-87T1 (1/24/90); Rutgers, the State Univ., P.E.R.C. No. 88-1, 13 NJPER 631 (¶18235 1987), aff'd App. Div. Dkt. No. A-174-87T7 (11/23/88); State of New Jersey, P.E.R.C. No. 88-2, 13 NJPER 634 (¶18236 1987); State Bd. of Higher Ed., P.E.R.C. No. 84-69, 10 NJPER 27 (¶15016 1983); Oradell Bor., P.E.R.C. No. 84-26, 9 NJPER 595 (¶14251 1983); Rockaway Tp., P.E.R.C. No. 82-72, 8 NJPER 117 (¶13050 1982); Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 79-90, 5 NJPER 229 (¶10126 1979); see also Asbury Park Bd. of Ed. v. Asbury Park Ed. Ass'n, 155 N.J. 76 (App. Div. 1977). (citations appear in text of original).

Based upon the foregoing, I decline to issue complaints upon these charges and accordingly, the charges are dismissed.

N.J.A.C. 19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 10, 1993
Trenton, New Jersey