P.E.R.C. NO. 82-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLEN ROCK ASSOCIATION OF
SCHOOL SECRETARIES,

Respondent,

-and- Docket No. CE-81-4-39

BOARD OF EDUCATION OF THE
BOROUGH OF GLEN ROCK,

Charging Party.

SYNOPSIS

The Commission affirms that portion of a recommended decision of its Hearing Examiner in an unfair practice proceeding which finds that the Glen Rock Association of School Secretaries did not violate N.J.S.A. 34:13A-5.4(b)(4) by refusing to execute a tentative agreement after it was rejected by the membership at a ratification vote. The Commission concludes that while the Association did not submit a letter at the beginning of the negotiations indicating the need for ratification, its general conduct throughout the negotiations evidenced the need for ratification by its membership. The Commission also affirms the Hearing Examiner's dismissal of the charge alleging a violation of N.J.S.A. 34:13A-5.4(b)(5). The filing of a Notice of Impasse is intended to give notice of the existence of a negotiations impasse, and the statements contained therein as to the other sides' position are the perceptions of the party filing the Notice. A violation will not be found merely because the other party believes its positions have not been accurately summarized.

However, the Commission does not adopt the Hearing Examiner's recommended dismissal of the Board's charge of bad faith negotiations by the Association in violation of N.J.S.A. 34:13A-5.4(b)(3). The Commission determines that the Association's claim of "mistake" as to the amounts tentatively agreed upon concerning salary and fringe benefits, and the delay in submission for membership ratification of a tentative agreement reached during collective negotiations with the Board, do constitute an unfair practice in violation of N.J.S.A. 34:13A-5.4(b)(3).

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STATE OF NEW JERSEY
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In the Matter of

GLEN ROCK ASSOCIATION OF
SCHOOL SECRETARIES,

Respondent,

-and- Docket No. CE-81-4-39

BOARD OF EDUCATION OF THE
BOROUGH OF GLEN ROCK,

Charging Party.

Appearances:

For the Respondent, Schneider, Cohen, Solomon & DiMarzio
(Bruce D. Leder, of Counsel)

For the Charging Party, Carroll, Panepinto, Pachman,
Williamson & Paolino
(Martin R. Pachman, of Counsel)

DECISION AND ORDER

On July 30, 1980, the Glen Rock Borough Board of Education (the "Board") filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Glen Rock Association of School Secretaries (the "Association") had violated the New Jersey Employer-Employee Relations Act (the "Act"). Specifically, the Board alleged that the Association refused to execute a final collective negotiations agreement and submit the agreement to its membership for ratification; that the Association filed a Notice of Impasse with the Commission raising new issues; that the Association made additional economic demands upon the Board after the completion of negotiations; and that the Association's

conduct in negotiations constituted bad faith, all in violation of N.J.S.A. 34:13A-5.4(b)(3), (4) and (5) of the Act.[1/]

On October 20, 1980, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On January 27 and 29, 1981, Hearing Examiner Alan R. Howe conducted a hearing, at which time, all parties had the opportunity to examine witnesses, present relevant evidence, and argue orally. Both parties filed post-hearing briefs.

On April 10, 1981, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-37, 7 NJPER _____ (¶_____ 1981), a copy of which is attached hereto and made a part hereof. He concluded that:

1. The Association did not violate N.J.S.A. 34:13A-5.4(b)(3) by the totality of its conduct of negotiations with the respondent for a successor agreement in 1979-80.

2. The Association did not violate N.J.S.A. 34:13A-5.4(b)(4) by refusing to reduce to writing a negotiated agreement and to sign such agreement.

3. The Association did not violate N.J.S.A. 34:13A-5.4(b)(5) by the filing of a Notice of Impasse on July 22, 1980.

On May 4, 1981, the Board filed exceptions accompanied by legal argument to the Hearing Examiner's Recommended Report and Decision. In essence, these exceptions assert that the Hearing

1/ These subsections prohibit public 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. (4) Reufsing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

Examiner erred: (1) with respect to several findings of fact; (2) in concluding that N.J.S.A. 34:13A-5.4(b)(4) was not violated by the Association's refusal to reduce to writing, sign and ratify their negotiated agreement based upon its own "mistake" with respect to the monetary amount of the full benefits package; (3) in concluding that N.J.S.A. 34:13A-5.4(b)(3) was not violated by the totality of the Association's conduct from the inception of the negotiations until the ratification vote, and (4) in concluding that the Association did not violate N.J.S.A. 34:13A-5.4(b)(5) or N.J.A.C. 19:12-3.1 by supplying inaccurate facts in the Notice of Impasse. The Association responded to the Board's exceptions by arguing in favor of the Hearing Examiner's Recommended Report and Decision.

With respect to the Board's allegation of erroneous findings of fact, we have thoroughly reviewed the record and we conclude that all of the Hearing Examiner's findings of fact, including those excepted to by the Board are adequately supported by the record, and are hereby adopted.

Turning to the Board's allegation of error in the Hearing Examiner's conclusion of no bad faith on the Association's part during negotiations or in the Association's failure to provide at the outset of negotiations a letter conclusively establishing its need for membership ratification
some additional discussion is warranted. The Hearing Examiner concluded that the Board's negotiating committee was fully aware of the Association negotiating committee's need for membership ratification, despite the latter's silence following the Board's presentation of its letter explaining that agreements reached in

negotiations were subject to full Board ratification. The Hearing Examiner based his finding upon use of the notation "TOK" by both parties as they proceeded to reach tentative accord on various aspects of the successor agreement, and by the Association's oral statement of its need for full membership ratification at the June 12-13, 1980 negotiations session.

Although we support the Hearing Examiner's conclusion, we do not base our affirmation solely upon the above two factors. The use of "TOK" is susceptible to two meanings. While "TOK" may indicate tentative acquiescence subject to membership ratification pending agreement on all issues, it may also denote a tentative agreement on a single clause pending agreement on the entirety of a package, without referring to a need for ratification. Thus, the mere use of "TOK" does not necessarily indicate a need for full membership ratification. Similarly, the Association negotiating committee's statement of its need to ratify at the June 12-13, 1980 negotiations session cannot, in and of itself, provide a basis for a finding of the Association's need for membership ratification, due to the length of time which elapsed from the inception of the negotiations until the June 12-13 session. We would not rely on a party's "eleventh hour" declaration of a need for ratification when no such need was established at the outset, if that were the only evidence in this case. In Black Horse Pike Regional Board of Education, P.E.R.C. No. 78-83, 4 NJPER 249 (1978), the Commission held:

> In order for collective negotiations to be effective and productive, it is essential that each participant know with certainty the extent of the opposing negotiating team's authority. A party must be able to rely on the statements and general conduct of the other side's representative during the negotiations process. Accordingly, the Commission...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 to conclude an agreement could reasonably be inferred.
> [4 NJPER at 250; emphasis added; accord,: In re Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 44 (1975); In re East Brunswick Bd. of Ed. and East Brunswick Administrators Association, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), motion for reconsideration denied, P.E.R.C. No. 77-26, 3 NJPER 16 (1977), dismissed as moot 12/2/77 App. Div. Docket No. A-250-76 (Unpublished Opinion).

Here, despite the Association negotiating committee's failure to provide a letter explaining the limits of the committee's authority at the outset of the negotiations, and despite its silence following the Board's presentation of its letter, the record is replete with both references and statements from members of the Association's negotiating team indicating the necessity of a full membership ratification of any "TOK"ed agreement. We therefore find adequate evidence in the record of the Association negotiating committee's general conduct evidencing the need for ratification and, accordingly, dismiss this exception.

With respect to the Board's "mistake" argument, we adopt generally, the findings of fact contained in the Hearing Examiner's finding No. 19; however, we disagree with his ultimate conclusion of no bad faith on the part of the Association. To reiterate the facts leading up to the "mistake" on the part of the Association's negotiators with respect to the amount of the Board's offer:

> ...Strickland and Kelso insisted in their testimony at the hearing that they thought that the figure 7.81% was being applied to the salary guide for each year, notwithstanding that J-1, which Kelso initialled, supra, states clearly that 6.51% was being applied to the guide and the totals for 1980-81 and 1981-82 were the gross figures of $202,380 and $218,185, respectively. Kelso explained that when she looked at J-1 she noticed only the "7.81" and "$202,380" figures and, since this was approximately $15,000 over the $187,718 figure, she concluded that the Association had obtained on the salary guide its original demand of $15,000. Strickland, who did not initial J-1, testified that she looked only at the figure $202,280" on J-1 from a distance of several feet and, recalling Bronner's calculations on the blackboard (J-4), concluded that 7.81% was being added to the salary guide for the 1980-81 school year. [Quoted from page 8 of Hearing Examiner's Recommended Report and Decision.]

We agree with the Hearing Examiner's assessment of Strickland and Kelso's misunderstanding of the Board's offer as being "totally unfounded." We are in complete accord with the Hearing Examiner in finding "no difficulty in comprehending the factual import of J-1 as to what the nature of the 'total package' was, namely, the total figure 7.81% meant that 6.51% was being applied to the salary guide and 1.30% was being applied to the cost of fringe benefits for each year of the agreement [Exhibit J-1]. Therefore, having determined the improbability of the Association negotiating committee's professed "mistake" with respect to the Board's offer, we are led to an ultimate finding of bad faith on the part of the Association.

The record indicates that the Association's representatives were experienced negotiators, and as such, we cannot permit their claim of "mistake" on an item as important as the salary

clause to excuse their conduct particularly in light of the Hearing Examiner's findings and the clear and unambiguous nature of the tentative agreement initialled by the parties. Additionally, although we make no per se finding with respect to the Association's failure to submit the negotiated package to its membership for ratification for more than two months following the last negotiations session, we note that this conduct is not inconsistent with a finding of bad faith on the part of the Association. Thus, we find a violation of N.J.S.A. 34:13A-5.4 (b)(3) with respect to the Association's negotiators' repudiation of the contents of J-1. See, State of New Jersey and Council of New Jersey State College Locals, Inc, E.D. No. 79, 1 NJPER 39, 40, aff'd State v. Council of N.J. State College Locals, 141 N.J. Super. 470 (App. Div. 1976).

We adopt the Hearing Examiner's findings as they relate to the Board's argument alleging violation of N.J.S.A. 34:13A-5.4 (b)(5) and N.J.A.C. 19:12-3.1 by the inclusion of allegedly "false and misleading information" on the Notice of Impasse form with respect to the Board's position regarding the salary guide, and by the inclusion of references to "representation fee" and "agency shop." There was no evidence that the Association intentionally misrepresented the Board's position, and the Association's statement was set forth only as its perception of the issues in dispute. As indicated, the statements on a Notice of Impasse are neither verified or certified, but are intended to give notice of the dispute.

In conclusion, we find that the Association negotiators' alleged "mistake" with respect to the meaning of the monetary package, and their subsequent failure to submit the package for ratification to their membership for more than two months, to constitute bad faith negotiations in violation of N.J.S.A. 34:13A-5.4 (b)(3).

ORDER

Respondent Glen Rock Association of School Secretaries, shall:

A. Cease and desist from refusing to negotiate in good faith with the Glen Rock Borough Board of Education by refusing to submit, or unnecessarily delaying the submission for ratification by Association members of tentative agreements reached in collective negotiations with the Board, based upon a claim of "mistake" as to the amounts agreed upon concerning salary and fringe benefit increases.

B. Take the following affirmative action:

1. Negotiate in good faith upon demand of the Glen Rock Board of Education concerning the terms and conditions of employment of employees it represents.

2. Post at all places where notices to employees from the Glen Rock Association of School Secretaries are customarily posted copies of the attached "Notice to Employees" marked as "Appendix A". Copies of such notice, on forms to be provided by the Commission, shall after being signed by the

Association's representative, immediately upon receipt thereof, be posted and maintained by it for a period of sixty (60) days thereafter in conspicuous places at the aforementioned locations. Reasonable steps shall be taken by the Association to insure that such notices are not altered, defaced, covered or expropriated.

3. Notify the Chairman of the Commission, in writing, within twenty (20) days of receipt of this Order, what steps have been taken to comply herewith.

C. The allegations in the Complaint that the Respondent Association violated N.J.S.A. 34:13A-5.4(b)(4) and (5) are hereby dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Parcells, Hartnett and Suskin voted for this decision. None opposed. Commissioners Graves, Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
July 21, 1981
ISSUED: July 22, 1981

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify all employees who are represented by the Glen Rock Association of School Secretaries that:

The Glen Rock Association of School Secretaries will cease and desist from refusing to negotiate in good faith with the Glen Rock Borough Board of Education by refusing to submit, or unnecessarily delaying the submission for ratification by Association members of tentative agreements reached in collective negotiations with the Board, based upon a claim of "mistake" as to the amounts agreed upon concerning salary and fringe benefit increases.

The Glen Rock Association of School Secretaries will negotiate in good faith upon demand of the Glen Rock Board of Education concerning the terms and conditions of employment of employees it represents.

GLEN ROCK ASSOCIATION OF SCHOOL SECRETARIES
(Public Employer)

Dated _____ By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

82-11

H. E. No. 81-37

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

In the Matter of

GLEN ROCK ASSOCIATION OF SCHOOL SECRETARIES,

Respondent,

-and-

Docket No. CE-81-4-39

BOARD OF EDUCATION OF THE BOROUGH OF GLEN ROCK,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Association did not violate Subsections 5.4(b)(3), (4) and (5) of the New Jersey Employer-Employee Relations Act. The Board had alleged that the Association negotiated in bad faith by engaging in "surface bargaining" with respect to the 1979-80 negotiations for a successor agreement. The Hearing Examiner was not persuaded that the Association, considering the totality of its conduct, had engaged in "bad faith bargaining." Additionally, the Board alleged that the Association refused to reduce a negotiated agreement to writing and to sign such agreement but the Hearing Examiner was of the view that the Association had reserved the right to submit the results of its negotiations to ratification by the membership, which rejected the negotiated agreement. Finally, the Board alleged that the Association supplied "false and misleading information" to the Commission in violation of the Act, which the Hearing Examiner concluded did not arise to a violation of the Act inasmuch as the information contained on a Notice of Impasse form was merely the unverified position of the Association in negotiations.

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

H. E. No. 81-37

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

In the Matter of

GLEN ROCK ASSOCIATION OF SCHOOL SECRETARIES,

Respondent,

- and - Docket No. CE-81-4-39

BOARD OF EDUCATION OF THE BOROUGH OF GLEN ROCK, 1/

Charging Party.

Appearances:

For the Glen Rock Association of School Secretaries
Schneider, Cohen, Solomon & DiMarzio, Esqs.
(Bruce D. Leder, Esq.)

For the Board of Education of the Borough of Glen Rock
Carroll, Panepinto, Pachman, Williamson & Paolino, Esqs.
(Martin R. Pachman, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission on July 30, 1980, and amended on July 31, 1980 and September 12, 1980, by the Board of Education of the Borough of Glen Rock (hereinafter the "Charging Party" or the "Board") alleging that the Glen Rock Association of School Secretaries (hereinafter the "Respondent" or the "Association") 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 Association has since the completion of negotiations on June 13, 1980 refused to execute a final collective negotiations agreement and/or submit the agreement to its membership for ratification; that the Association did on July 22, 1980

1/ As amended at the hearing.

file a Notice of Impasse with the Commission, which raised new issues; that on September 4, 1980, at a mediation session, the Association made additional economic demands upon the Board; and that on September 9, 1980 the Association did submit the subject matter to ratification, which was rejected; all of which was alleged by the Board to be a demonstration of bad faith by the Association in violation N.J.S.A. 34:13A-5.4(b)(3), (4) and (5) of the Act. 2/

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on October 20, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on January 27 and 29, 1981 3/ in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and both parties filed post-hearing briefs by April 6 , 1981.

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 after consideration of the post-hearing briefs of 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 Board of Education of the Borough of Glen Rock is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2/ These Subsections prohibit public 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.

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

"(5) Violating any of the rules and regulations established by the Commission."

3/ See page 3, infra.

2. The Glen Rock Association of School Scretaries is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. It was stipulated that collective negotiations history of the parties dates back to 1968. The parties executed one-year agreements from 1968 through 1975. There was a two-year agreement for 1975-77 and a three-year agreement for 1977-80.

4. In past negotiations the membership of the Association has always voted on ratification of negotiated collective agreements.

5. Negotiations for a successor agreement to the 1977-80 agreement commenced at a meeting of the negotiations committees of the parties on November 14, 1979. At this meeting the Chairman of the Board's Negotiating Committee, Terry Della Vecchia, read to the members of the Association's Negotiating Committee a "Bergenfield letter," the thrust of which was that any negotiations by the Board's Negotiating Committee were subject to "the final and ultimate authority concerning any agreement" by the Board (CP-1).

6. Also at this first negotiations meeting, ground rules, proposed by the Board for negotiations, were read by Della Vecchia to the members of the Association's Negotiating Committee (CP-2). The Association had no problem with any of the proposed ground rules except paragraph 3(d), which provided that: "All matters discussed in negotiation will remain confidential. Should we get to impasse, we will agree to reopen this question of confidentiality with the negotiating team of the other side." Della Vecchia explained that this rule on confidentiality did not preclude communication with the members of the Association. She added that it was directed at the Association's Negotiating Committee and the members of the Association insofar as precluding them from

3/ The hearing was originally scheduled to commence on December 10, 1980 but was adjourned by agreement to the first mutually available date at the request of counsel for the Charging Party.

going to the public or to the press on matters discussed in negotiations. The Association's Negotiating Committee responded that they had no problem regarding themselves in maintaining confidentiality, but that they could not be bound by what individual members of the Association might do vis-a-vis the public and the press. There was no resolution of the disagreement over confidentiality at this first negotiations meeting.

7. At the second negotiations meeting on December 5, 1979 the focus was again on the confidentiality ground rule and this dispute continued to be an unresolved issue at the third meeting on January 9, 1980. The Board at the January 9th meeting asked the Association for an affirmative response, stating that if it was not forthcoming then the Board would declare an impasse.

8. Under date of January 10, 1980 the President of the Association, Jean Grusser, sent a letter to Della Vecchia, which stated that the Board's threat to refuse to bargain unless a specific ground rule on confidentially was obtained constituted an unfair labor practice, but that before filing such a charge the Association requested the Board to reconsider its position and resume negotiations (CP-3).

9. Under date of January 14, 1980 the Board's attorney, Martin R. Pachman, responded by letter expressing astonishment at the Association's refusal to agree to negotiate in a confidential manner and enclosed a "Notice of Impasse" to the Commission (CP-4). Thereafter, the Board instructed its attorney to try to resolve the impasse informally and, following a telephone conversation with Winifred Kelso, the Association's NJEA negotiation consultant, Pachman sent a letter to Kelso under date of January 21, 1980, attached to which was a proposed written resolution of the confidentiality dispute for signature by the Board and by the Association (CP-5).

10. Under date of January 31, 1980 Grusser wrote Della Vecchia stating that the Association did not wish to sign any document on confidentiality and would instead prefer to meet and continue negotiations (CP-6).

11. Under date of February 4, 1980 Pachman advised Grusser by letter that he had contacted the Commission and requested the assignment of a mediator (CP-7). A fourth negotiations meeting was eventually scheduled and held on March 19, 1980, at which time verbal resolution of the confidentiality dispute was consummated.

12. Thereafter substantive negotiations on non-economic issues occurred at meetings on April 2, May 7, May 14, and May 21, 1980 where tentative agreement was reached on the language to be incorporated into the successor agreement (CP-8). As agreement was reached the letters "TOK" were affixed to typewritten and handwritten pages with the date and the initials of the chief negotiators placed thereon. 4/

13. At the eighth negotiations meeting on May 21, 1980 the Association raised the issue of "agency shop," according to the Association's witnesses, whom the Hearing Examiner credits. Kelso displayed to Superintendent Carpenter, an NJEA proposal on "agency shop" but did not hand her a copy. Kelso testified

4/ The witnesses for the parties were in agreement that "TOK" meant that a tentative agreement had been reached on a substantive issue in negotiations, which was then set aside and subject to overall final agreement being reached. The Board, relying on the "Bergenfield letter," supra, was clear that its Negotiating Committee's actions were subject to final approval and ratification by the Board. There was, however, a dispute between the parties as to whether the Association's Negotiating Committee had communicated to the Board's Negotiating Committee that the actions of the Association's Negotiating Committee were subject to ratification by the membership of the Association. Board witnesses testified that at least at the last negotiations meeting on June 12, 1980 the Chairman of the Association's Negotiating Committee stated that the negotiated agreement would have to be ratified by the membership. Also, the Board's Superintendent, Betty S. Ostroff-Carpenter, testified that the Association's membership had always ratified prior negotiated agreements. There had been a total of nine prior negotiated agreements (see Finding of Fact No. 3, supra).

credibly that there was a "real discussion" of the "agency shop", and explaining that she did not offer Superintendent Carpenter a copy because the discussion on the issue had "bogged down." The Board's witnesses, whom the Hearing Examiner does not credit, either denied or could not recall that there had been any discussion of "agency shop" at this meeting.

14. The ninth negotiations meeting of the parties commenced on June 12, 1980 and continued into the next morning, June 13th. The principal subject matter of this meeting dealt with salary and fringe benefits. The Association had earlier presented a salary proposal, requesting that the 9-step guide be reduced to a 4-step guide, and that "Effective July 1, 1980 the total wage package for Secretaries shall be equal to 15% of their new 4-step guide salaries. This package shall include any increments." (J-2, p. 2). The Board had not previously made a salary proposal (see J-3).

15. At the June 12th negotiations meeting Kelso testified credibly that the subject of fringe benefits was first agreed to, which included two (2) additional sick days, earlier vacation and severance pay. 5/ The cost of the fringe benefits was calculated at 1.30% by the Board as against a "total package" of 7.81% in costs for each year of the two-year agreement (see J-1).

16. Kelso also testified credibly that the Association wanted $15,000 added to the salary account, which would equal something in excess of 8% in "new money." 6/

5/ Kelso also testifed credibly that prior to the first negotiations meeting in November 1979 she received from the Superintendent the total salary expense figure of $187,718 for 1979-80. This figure was thereafter used by the parties in negotiations, principally on June 12, 1980, as the basis for determining the cost of the total expense package ultimately agreed upon.

6/ The parties were in substantial agreement on a definition of "new money." The Board testified that "new money" meant monies expended on a new agreement over and above the total expenditures in the last year of the prior agreement. Kelso testified that "new money" meant increases to salary, which may or may not include increments, depending on the understanding of the parties reached in negotiations.

Kelso testified further, without contradiction, that the Board originally offered $10,000 to be added to the salary account as the "new money" for the successor agreement. Kelso also testified credibly that the parties always negotiated in terms of dollars and not percentages.

17. At the June 12-13th negotiations session Board negotiator John Bronner produced calculations on behalf of the Board for the benefit of the Association and in the course of doing so used a blackboard. The Chairman of the Association's Negotiating Committee, Ruth M. Strickland, made a memo from Bronner's calculations on the blackboard (J-4). An examination of this memo indicates that the total salary expense figure of $187,718 was multiplied by 1.0781, which calculation resulted in the figure $202,378.77, which was "rounded off" eventually to $202,380. An examination of J-4 also discloses that this latter figure was again multiplied by 1.0781 to produce a figure of $218,184.56, which was "rounded off" to $218,185. A subtraction of the figure $187,718 from the latter figure produced a final figure, which represented the total increase in the cost of the two-year total package of $30,467.

18. During the course of the negotiations on June 12-13th the foregoing calculations were reduced to a writing, which was introduced in evidence as Exhibit J-1. This Exhibit is dated "6/13/80" and recites that the "Salary Agreement--Total Package" is 7.81% for each year. Thereafter the document (J-1) recites "6.51 to guide" and "1.30 benefits" for a total of 7.81. Thereafter, as an examination of J-1 discloses, the figure $202,380 is set forth as the "Total" for 1980-81 and the figure $218,185 is set forth as the "Total" for 1981-82. Finally, it is indicated on J-1 that the total increase of $30, 467 from the base figure of $187,718 is 16.23%. There also appears on J-1 a "TOK" with the initals "WK" and "TD." Finally, there appears the same initals and a "TOK" on the left-hand side of J-1, indicating an agreement on a move from Guide I to

Guide II for the "10-month library secretary." 7/

19. For reasons still not apparent to the Hearing Examiner, Strickland and Kelso insisted in their testimony at the hearing that they thought that the figure 7.81 % was being applied to the salary guide for each year, notwithstanding that J-1, which Kelso initialled, supra, states clearly that 6.51% was being applied to the guide and the totals for 1980-81 and 1981-82 were the gross figures of $202,380 and $218,185, respectively. Kelso explained that when she looked at J-1 she noticed only the "7.81" and "$202,380" figures and, since this was approximately $15,000 over the $187,718 figure, she concluded that the Association had obtained on the salary guide its original demand of $15,000. Strickland, who did not initial J-1, testified that she looked only at the figure "$202,280" on J-1 from a distance of several feet and, recalling Bronner's calculations on the blackboard (J-4), concluded that 7.81% was being added to the salary guide for the 1980-81 school year. Although not impugning the veracity of the testimony of either Kelso or Strickland, the Hearing Examiner finds that their conclusions as to what was contained on J-1 are totally unfounded. The Hearing Examiner has no difficulty in comprehending the factual import of J-1 as to what the nature of the "total package" was, namely, that the total figure 7.81% meant that 6.51% was being applied to the salary guide and 1.30% was being applied to the cost of fringe benefits for each year of the agreement.

20. Strickland testified that about three or four days thereafter she first noticed "6.51 to guide" on J-1 and called Superintendent Carpenter, telling her that she was "surprised," inasmuch as the members of the Association wanted 9%. Strickland also advised Kelso of this revelation and, as a result, another negotiations meeting was scheduled for July 1, 1980.

7/ The Board shortly on or after June 12, 1980 prepared a "Tentative Agreement" between the parties, which incorporated all agreements reached through June 12th but, as to "salaries," indicated only Appendixes "A and B," which were not attached (CP-9).

21. A luncheon meeting of the secretaries of the Association was scheduled for the end of June 1980, at which only members of the negotiations unit attended. It was intended to vote at that time on the negotiated agreement but, because of the "mistake," no vote was taken and the members were advised of the next meeting with the Board on July 1st.

22. At the July 1, 1980 negotiations meeting of the parties, Kelso explained the "mistake" and, after the Board members caucused, the Board presented a counter-proposal, namely, that the full 7.81% would be applied to the salary guide for the second year of the agreement. The Association made no response. 8/

23. Under date of July 22, 1980 Strickland filed a Notice of Impasse with the Commission indicating under "items in dispute" that the Board wished "to discard present 8-step salary guide and arbitrarily construct a completely new 5-step guide." (CP-10). The Notice of Impasse form (CP-10) also indicated that "Representation fee" was an additional matter for consideration.

24. The next event in this negotiations saga was a Commission-convened mediation meeting on September 4, 1980, at which the Association increased its economic demands upon the Board, which did not result in the consummation of a final agreement.

25. On September 9, 1980 the Association's Negotiating Committee submitted the agreement as negotiated up to that point to the membership of the Association which, notwithstanding the recommendation of the Negotiating Committee to accept, voted 12-3 to reject the agreement. There have been no further formal negotiations since that date.

8/ Another meeting was scheduled for about a week later but was never convened because the NJEA Field Representative recommended that impasse be declared. On July 7, 1989 Strickland sent a letter to Della Vecchia advising of the Association's intention to declare impasse (CP-11).

THE ISSUES

1. Did the Association violate Subsection (b)(4) of the Act by refusing to reduce to writing a "negotiated agreement...and to sign such agreement?"

2. Did the Association by the totality of its conduct refuse to negotiate in good faith with the Respondent in the 1979-80 negotiations for a successor agreement in violation of Subsection (b)(3) of the Act?

3. Did the Association violate Subsection (b)(5) of the Act by filing a Notice of Impasse on July 22, 1980?

DISCUSSION AND ANALYSIS

The Association Did Not Violate Subsection (b)(4) Of The Act By Refusing To Reduce To Writing A Negotiated Agreement And To Sign Such Agreement

The Hearing Examiner finds and concludes that the Association did not violate Subsection (b)(4) of the Act by refusing to reduce to writing a "negotiated agreement...and to sign such agreement." The reasons for this holding follow.

The essential facts are thus:

1. At the outset of negotiations on November 14, 1979 the Chairman of the Board's Negotiating Committee read to the members of the Association's Negotiating Committee a "Bergenfield letter," which stated clearly that the negotiations by the Board's Negotiating Committee were subject to the final and ultimate authority of the Board. The Association's negotiators made no response in like fashion. However, the nine prior negotiated agreements since 1968 had always been submitted to the Association's members for ratification.

2. Thereafter, during the course of negotiations, each time that tentative agreement was reached on a proposal, either non-economic or economic, the initials "TOK" were placed on the document and initalled by both parties' chief negotiators.

3. At the negotiations meeting on June 12-13, 1980 the Chairman of the Association's Negotiating Committee stated that the negotiated agreement would have

to be ratified by the members. At a luncheon meeting of Association members at the end of June 1980 no ratification vote was taken because of a "mistake" on the economic package insofar as the Association's Negotiating Committee was concerned.

4. At a negotiations meeting on July 1, 1980, after the Association explained the "mistake," the Board presented a counter-proposal, which increased the content of the economic package over and above what was negotiated at the June 12-13 negotiations meeting. Significantly, the Board did not at the July 1st meeting indicate to the Association that it was making a counter-proposal without prejudice to its position that an agreement, final and binding upon the Association, had been reached at the June 12-13, 1980 negotiations meeting.

Essential to the resolution of the Subsection (b)(4) issue based on the facts of the instant case , is the interpretation of the Commission's decision in Black Horse Pike Regional Board of Education, P.E.R.C. No. 78-83, 4 NJPER 249 (1978). At first glance BlackHorse appears to reject flatly any consideration of the past practice or negotiations history of the parties specifically with respect to whether the Association has or has not negotiated prior agreements subject to ratification. Thus, for example, the Commission states that in order for collective negotiations to be "effective and productive, it is essential that each participant know with certainty the extent of the opposing negotiating team's authority." The Commission added that "A party must be able to rely on the statements and general conduct of the other side's representatives during the negotiations process." (4 NJPER at 250).

The Commission next proceeded to make reference the criteria established in Bergenfield Bd. of Education, P.E.R.C. No. 90, 1 NJPER 44 (1975),[9/] stating that it would consider only whether, during the course of the particular negotiations

9/ See also East Brunswick Bd. of Education, P.E.R.C. No. 77-6, 2 NJPER 279 (1976).

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 to conclude an agreement could be reasonably inferred." The Commission concluded that consideration of the past history of ratification would only "cause confusion and disruption to the negotiating process" and indicated that 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." (4 NJPER at 250).

On the facts in Black Horse the Commission found that the Association had stated at the outset that it would have to "bring back" the contract to the Association's members for ratification. Thus, the Commission concluded that there was prompt and adequate notice to the Board's negotiating team that ratification was necessary before a binding agreement was reached.

Notwithstanding Black Horse, the Hearing Examiner is here persuaded that the instant Board's Negotiating Committee was well aware during the entire course of negotiations from November 1979 through June 1980 that the Association's Negotiating Committee had first to submit the results of negotiations to ratification by the Association's members. The Hearing Examiner does not attach any contrary significance to the fact that the Association's Negotiating Committee members remained silent after the Board's Negotiating Committee read the "Bergenfield letter" at the first meeting on November 14. If anything, one might well conclude from the Association's silence that it, too, was negotiating from its prior stance of always having submitted the results of negotiations for ratification over the course of nine negotiated agreements since 1968. If there was to be a departure from the prior practice, it is logical to conclude that the Association's Negotiating Committee would have stated at the outset that in the instant negotiations,

unlike prior negotiations, the Association Negotiating Commitee was prepared to reach an agreement without the necessity of ratification.

Further, the Hearing Examiner attaches weight to the use by both parties of the "TOK" as they proceeded to reach tentative agreement on various aspects of the successor agreement. Finally, the Association's Negotiating Committee stated at the meeting of June 12-13, 1980 that their actions were subject to ratification by the membership. The Hearing Examiner finds and concludes that this statement at that meeting was totally consistent with the conduct of the Association's Negotiating Committee since November 1979 and at no time were the members of the Board's Negotiating Committee misled or prejudiced in the negotiations.

Thus, the Hearing Examiner does not find, on the facts of the instant case, that consideration of the factor of past history of ratification caused "confusion and disruption to the negotiating process" within the meaning of Black Horse, supra. The Board's Negotiating Committee cannot have "reasonably... inferred" other than that the Association's Negotiating Committee was never clothed with apparent authority to bind the Association in the absence of ratification by the membership.

Even assuming arguendo that the Respondent is correct in its contention that a final agreement was reached at the June 12-13 negotiations session, and that the Association was bound at that point, the Hearing Examiner is of the view that the Board waived its right to hold the Association to the final agreement, reached on June 12-13, by making a counter-proposal, which increased the content of the economic package, at the July 1, 1980 negotiations meeting. Notwithstanding that the Board had had access to competent legal counsel during the course of negotiations, it went to the July 1st meeting and made a counter-proposal on

economics without adequately protecting its position that an agreement, final and binding upon the Association, had been reached at the June 12-13 negotiations meeting. Thus, the Board reopened the economic area of negotiations and thereby released the Association from any obligation to execute an agreement based upon what had transpired in the negotiations from November 1979 through June 12-13, 1980.

For the foregoing reasons, the Hearing Examiner will recommend dismissal of the alleged violations of Subsection (b)(4) of the Act.

The Association Did Not Refuse To Negotiate In Good Faith With The Respondent In The 1979-80 Negotiations For A Successor Agreement

The Hearing Examiner finds and concludes that, based upon the totality of its conduct, the Association did not refuse to negotiate in good faith with the Respondent in and during the 1979-80 negotiations for a successor agreement and thus did not violate Subsection (b)(3) of the Act.

The leading case on the subject is State of New Jersey and Council of New Jersey State College Locals, etc., E.D. No. 79, 1 NJPER 39, aff'd, State of New Jersey v. Council of New Jersey State College Locals, etc., 141 N.J. Super. 470 (App. Div. 1976). In that case the Executive Director of the Commission was affirmed in his refusal to issue a complaint upon a charge alleging that the State's failure to acquiesce during negotiations on salaries and fringe benefits constituted "bad faith bargaining." The Executive Director, drawing upon established principles of labor law in both the private and public sectors, found that: "It is necessary to subjectively analyze the totality of the parties' conduct in order to determine whether an illegal refusal to negotiate may have occurred...The object of this analysis is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an

open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement." (Emphasis supplied). [1 NJPER 40].

The Executive Director then went on to note as follows:

> "It is well established that the duty to negotiate in good faith is not inconsistent with a firm position on a given subject. 'Hard bargaining' is not necessarily inconsistent with a sincere desire to reach an agreement. An adamant position that limits wage proposals to existing levels is not necessarily a failure to negotiate in good faith. Were the State to have been inflexible on the salary issue, which it appears not have been, a refusal to negotiate in good faith would not be found without an evaluation of its conduct throughout the negotiations on all issues." (Emphasis supplied). [1 NJPER 40].

The Executive Director concluded in State of New Jersey, supra, that while the State had been adamant on the issue of salaries it had given reasons for its position, and no indication of a desire or intention not to reach an agreement could be found, which might constitute a refusal to negotiate in good faith.

So, too, did the Commission conclude in Township of Hillside, P.E.R.C. No. 77-47, 3 NJPER 98 (1977) that "...the totality of the Township's bargaining conduct reveals no violation of the duty to bargain in good faith..." (Emphasis supplied). See also, Township of Parsippany-Troy Hills, P.E.R.C. No. 78-35, 4 NJPER 32 (1977).

It is the Board's contention that the Association engaged in "surface bargaining" throughout the course of the 1979-80 negotiations. However, the record fails to support such a contention.

The Respondent first points to the initial negotiations regarding the "confidentiality" issue. It is first noted that these "negotiations" pertained only to a ground rule governing the conduct of the parties and not to a mandatory term and condition of employment. While it may in retrospect be regretable that so much time and effort was expended in resolving the confidentiality question,

it is difficult for the Hearing Examiner to make a finding that the Act was violated by the Association, based upon this preliminary phase of the parties' negotiations for a successor agreement.

Additionally, the Hearing Examiner is not constrained to base a finding of bad faith on the part of the Association upon the fact that the Association raised the issue of "agency shop" or "representation fee" at the eighth negotiations meeting on May 21, 1980. The Respondent, while not strenuously pressing this point, indicates that it was too late on May 21 for any new issues to be placed on the table inasmuch as the period had passed for raising new issues in negotiations.

The Respondent spends considerable time in its Brief belaboring the Association for having claimed "mistake" beginning a few days after the conclusion of the June 12-13 negotiations meeting. The Hearing Examiner has expressed skepticism that the Association's negotiators could have misunderstood the nature of the "total package" which was "TOK'd" on J-1 at that meeting (see Finding of Fact No. 19, supra). Nevertheless, "Mistake" was the position taken by Strickland and Kelso several days after the June 12-13 meeting. It was for this reason that the Association did not submit the negotiated agreement to ratification at the luncheon meeting near the end of June 1980.

At the July 1, 1980 negotiations meeting Kelso explained the "mistake" to the Board's Negotiating Committee, following which the Board caucused and thereafter presented a counter-proposal, namely, that the full 7.81% would be applied to the salary guide for the second year of the agreement. The Association made no response to this counter-proposal. A meeting scheduled for a week later was never convened because of a recommendation by an NJEA Field Representative that impasse be declared (see CP-11). A Notice of Impasse form (CP-10) was filed under date of July 22, 1980 which, the Respondent urges, contained erroneous information. Thereafter there was a Commission-convened mediation meeting on September 4, 1980, at which the Association increased its economic demands upon the Board. On

September 9. 1980 the Association's Negotiating Committee submitted the agreement as negotiated up to that point to the membership of the Association, which voted to reject.

The Hearing Examiner is not persuaded that the conduct of the Association's representatives following the June 12-13 negotiations session, when considered in its totality, constitutes evidence of bad faith and "surface bargaining." Thus, based upon the record and the Commission precedent cited above, the Hearing Examiner concludes that the Association did not engage in "bad faith bargaining" and that the Respondent's allegations that the Association violated Subsection (b)(3) of the Act should be dismissed.

The Association Did Not Violate Subsection (b)(5) Of The Act By Filing A Notice of Impasse on July 22, 1980

The Hearing Examiner finds and concludes that Subsection (b)(5) of the Act was not violated by the Association when it filed a Notice of Impasse on July 22, 1980. The Respondent alleges that the Association put "false and misleading information" on the Notice of Impasse form with respect to the Board's position regarding the salary guide and by including reference to "representation fee" or "agency shop."

It is first noted that there is no requirement on the Notice of Impasse form that it be verified or certified. Thus, any information supplied by the party filing is merely a statement of its perception of the issues in dispute. Clearly, information supplied, with which the opposing party disagrees, cannot constitute a violation of the Commission's rules and regulations.

Accordingly, the Hearing Examiner will recommend dismissal of the allegations that the Association violated Subsection (b)(5) of the Act.

* * * *

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

CONCLUSIONS OF LAW

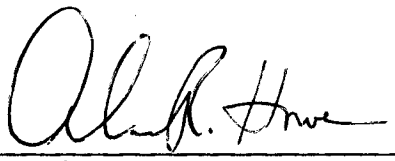
1. The Association did not violate N.J.S.A. 34:13A-5.4(b)(3) by the totality of its conduct in negotiations with the Respondent for a successor agreement in 1979-80.

2. The Association did not violate N.J.S.A.34:13A-5.4(b)(4) by refusing to reduce to writing a negotiated agreement and to sign such agreement.

3. The Association did not violate N.J.S.A. 34:13A-5.4(b)(5) by the filing of a Notice of Impasse on July 22, 1980.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

DATED: April 10, 1981
Trenton, New Jersey