

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAKELAND REGIONAL HIGH SCHOOL  
DISTRICT BOARD OF EDUCATION,  
Respondent,

-and-

Docket No. CO-76-307-16

LAKELAND REGIONAL HIGH SCHOOL  
TEACHERS' ASSOCIATION,  
Charging Party.

SYNOPSIS

In a decision and order on motions the Commission denies the requests of the Board of Education and Teachers' Association for special permission to appeal a ruling of a Commission Hearing Examiner requiring that the Association supply the Board with the names of members of the Board who, as alleged in the Association's charge as incorporated in the complaint, made certain, possibly incriminating, statements. The Commission determines that neither the Association nor the Board in their submissions concerning their respective requests for special permission to appeal has raised issues of sufficient significance to warrant Commission review at this time.

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Appearances:

For the Respondent, Slingland, Bernstein and vanHartough,  
Esqs. (Mr. Nathan Bernstein, of Counsel)

For the Charging Party, Goldberg, Simon and Selikoff, Esqs.  
(Mr. Gerald M. Goldberg, of Counsel)

DECISION AND ORDER ON MOTIONS

On December 15, 1976 Hearing Examiner Edmund G. Gerber issued a written ruling relating to a motion for summary judgment filed by the Respondent, Lakeland Regional High School District Board of Education. The ruling, a copy of which is attached hereto and made a part hereof, was designated as H.E. No. 77-10, 2 NJPER \_\_\_\_\_. The Hearing Examiner determined that the Respondent's motion for summary judgment was mislabelled and was instead in the nature of a motion to dismiss complaint.<sup>1/</sup> The Hearing Examiner, in his

1/ The Hearing Examiner chose not to dismiss the original motion for summary judgment on technical, procedural grounds. He considered the merits of said motion after converting same into a motion to dismiss complaint.

Recommended Order on Motion, held that the Lakeland Regional High School Teachers' Association, as the Charging Party, had to supply to the Respondent the names of members of the Board of Education who, as alleged by the Association in its charge as incorporated in the complaint, made certain, possibly incriminating, statements.<sup>2/</sup> The Association had maintained that it had stated a sufficient cause of action in its charge and therefore had no obligation to supply the names of the Board members in question.

By letter dated December 24, 1976 the Respondent filed with the Commission a "Request to Appeal", requesting special permission, pursuant to N.J.A.C. 19:14-4.5<sup>3/</sup> to appeal the Hearing

- <sup>2/</sup> The Hearing Examiner added that if the Association did not know the names of the Board members, it should so state. The Hearing Examiner further determined that if the Association failed to supply the necessary information within ten days, the relevant portion of the Association's charge as incorporated in the complaint would be dismissed from the complaint.
- <sup>3/</sup> N.J.A.C. 19:14-4.5 provides as follows: "All motions, rulings and orders shall become part of the record, except that rulings on motions to quash a subpoena shall become a part of the record only upon the request of the party aggrieved thereby. Unless expressly authorized by these rules, rulings and orders by the Commission's named designee, if any, and by the hearing examiner on motions, and by the hearing examiner on objections, shall not be appealed directly to the Commission except by special permission of the Commission, but shall be considered by the Commission in reviewing the record, if exception to the ruling or order is included in the statement of exceptions filed with the Commission, pursuant to N.J.A.C. 19:14-7.3 (Exceptions; Cross-exceptions; Briefs; Answering Briefs). Requests to the Commission for such special permission to appeal shall be filed in writing within five days from the service of written rulings or statement of oral rulings, as the case may be, and shall briefly state the grounds relied on. An original and nine copies of such request shall be filed with the Commission, and simultaneously a copy shall be served upon each other party and, if the request involves a ruling by a hearing examiner, upon that hearing examiner. Proof of such service shall be filed with the Commission. In the event the Commission grants an appeal on special permission, the proceedings shall not be stayed thereby unless otherwise ordered by the Commission."

Examiner's ruling. Essentially, the Respondent contends that the Hearing Examiner did not go far enough in his ruling and should have compelled the Charging Party to furnish to the Respondent the statements allegedly made by the Board members whose identity the Hearing Examiner had ordered be revealed. The Respondent asserted that, in the absence of such information, that portion of the charge and the complaint referring to alleged statements by Board members should be dismissed. A statement of the grounds relied on was included in the motion papers.

By letter dated January 4, 1977<sup>4/</sup> the Charging Party filed with the Commission its "Request to Appeal", also requesting special permission, pursuant to N.J.A.C. 19:14-4.5, to appeal the Hearing Examiner's ruling. The Charging Party argues that compliance with the Hearing Examiner's ruling when the information sought by the Respondent is "extraneous to the gravamen" of the charge would be unreasonable and not required by the Commission's Rules. A statement of the grounds relied on was contained in the motion papers.

Upon due deliberation, the Commission has determined that neither the Respondent nor the Charging Party in their submissions concerning their respective requests for special permission to appeal has raised issues of sufficient significance to warrant Commission review at this time. It is the clear intent of the above-quoted Rule of the Commission that rulings of Hearing Examiners on motions will normally be considered by the Commission in reviewing

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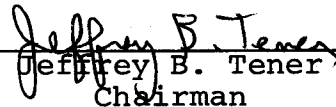
<sup>4/</sup> The Charging Party asked for and was granted an extension of time in which to file its "Request to Appeal" until January 7, 1977.

the entire record if exceptions to said rulings are included in a party's exceptions to a Hearing Examiner's Recommended Report and Decision filed pursuant to N.J.A.C. 19:14-7.3. We do not believe that the instant motions require our consideration at this time.

ORDER

It is, therefore, hereby ordered that the parties' requests for special permission to appeal the ruling of the Hearing Examiner are denied.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst and Parcels voted for this decision.  
Commissioners Hipp and Hurwitz did not participate in this matter.  
Commissioner Hartnett was not present.

DATED: Trenton, New Jersey  
January 26, 1977  
ISSUED: January 27, 1977

STATE OF NEW JERSEY  
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TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner, in a Recommended Order on Motion, held that the Teachers Association, as Charging Party, had to supply to the Respondent Board of Education the names of members of the Board who, the Association alleges in its charge as incorporated in the complaint, made certain, possibly incriminating, statements. The Association maintained they had stated a sufficient cause of action in their charge and therefore had no obligation to supply the names of the Board members in question.

The Hearing Examiner finds that the charge, as incorporated in the complaint, states a cause of action sufficient to withstand a motion to dismiss. However, the charge did not satisfy the separate and distinct requirement of Commission Rule 19:14-2.1. Said rule requires that all charges include, when known, the time and place of occurrence of the particular act alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated.

Pursuant to Commission Rule 19:14-4.5 this Recommended Order shall not be appealed directly to the Commission except by special permission of the Commission, but shall be considered by the Commission after the Hearing Examiner submits a recommended report and decision in this matter if exceptions to the order are filed in accordance with Commission Rule 19:14-7.3 (Exceptions; Cross-Exceptions; Briefs; Answering Briefs).

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TEACHERS ASSOCIATION,

Charging Party.

MESSRS. SLINGLAND, BERNSTEIN & van HARTOGH  
By: Nathan Bernstein, Esq.,  
Attorney for Respondent

MESSRS. GOLDBERG, SIMON & SELIKOFF  
By: Gerald M. Goldberg, Esq.,  
Attorney for Charging Party.

HEARING EXAMINER'S RECOMMENDED  
ORDER ON MOTION

The Lakeland Regional High School Teachers Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") on May 14, 1976 containing the following allegations: The Lakeland Regional High School District Board of Education ("Board") committed an unfair practice by denying Mr. Edward Harkey the Chairmanship of the Science Department at the Lakeland Regional High School. Mr. Harkey was the chief negotiator for the Association during the 1975-77 contract negotiations. During these negotiations there were, "acrimonious exchanges and a three day strike". In early 1976 the Board created the position of Department Chairman -- Harkey applied for this position and the School Superintendent recommended to the Board that it appoint him to this position. The Board, however, declined to do so. Harkey then reapplied for the position and again received the recommendation of the School Superintendent. On April 7, 1976 the Board again denied the recommendation. It is alleged that during the course of the April 7 meeting "two members of the Board spoke directly and indirectly to the question that Mr. Harkey was being denied the chairmanship on the basis of his organizational activities, not for any reason relating to his professional competence." It is alleged that these acts constitute a violation of N.J.S.A. 34:13A-5.4(a) subsections (1) and (3).

In accordance with the Commission standards as stated in N.J.A.C. 19:13-2.1 <sup>1/</sup> a Complaint and Notice of Hearing was issued on August 6, 1976.

The Respondent filed a Notice of Motion in this matter with the Commission on August 17, 1976. The Commission referred this motion to the undersigned Hearing Examiner. Briefs were submitted by the parties and a return date for the motion was set for November 9, 1976 at which time the undersigned heard oral argument.

The motion as filed is entitled Notice of Motion for Summary Judgment. The motion seeks a summary judgment dismissing the complaint upon the grounds that the complaint "does not set forth allegations in particularity designating: The names of the members of the Respondent who allegedly made certain remarks concerning the appointment of Mr. Harkey as Chairman of the Science Department as well as the exact words used, and the time and place of the making of those remarks." The Charging Party failed to "allege that these remarks influenced the rejection of Mr. Harkey's application and the bare facts of the complaint do not constitute facts upon which a charge of unfair practice can be sustained and the allegations of the unfair practice are vague, indefinite, and constitute conclusions and assumptions which are hypothetical and that by reason thereof, no answer can be filed."

In oral argument, the Respondent maintained that under the terms of Commission Rule 19:14-1.3, the Association had to include in the charge both a certification by the Charging Party that the statements made therein are true and "a clear and concise statement of the facts constituting the alleged unfair practice including where known, the time and place of the occurrences of the particular acts alleged and the names of the Respondent's agents or other representative by whom committed." The failure of the Association to provide the names of the Board members alleged to have made statements referring to Harkey's Association activity violated the Commission Rules. <sup>2/</sup>

The Association refuses to supply the names of the Board members who made statements regarding Harkey's Association activity. Its position is that

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<sup>1/</sup> "If it appears to the Commission or its named designee that the allegation of the Charging Party if true, may constitute unfair practice on the part of the Respondent... The Commission or its named designee shall issue... a formal complaint."

<sup>2/</sup> The Respondent also claims that the Association failed to disclose the date of the Board meeting in question. The date is included in the charge; admittedly, the charge is awkwardly worded.



it has no obligation to reveal this information, for its charge, as incorporated into the complaint, is sufficiently specific in stating a cause of action. Additionally, the motion, as a motion for summary judgment, is technically defective. Taking the Association's latter argument first, the Association points to the Civil Court Rules on motion practice and suggests that the Commission look to them for guidance. R. 4:46-1 of the Rules of Court provides that a motion for summary judgment can only be entered after the expiration of 20 days from the service of the moving parties pleadings. The Respondent, however, has never filed an answer, so, if this rule were to apply to motions before the Commission, the Respondent's motion would be defective.

While it is not necessarily inappropriate to look to the Court Rules for guidance, it must be remembered that the Commission Rules were not drawn from the Rules of Court. <sup>3/</sup> They are rather broad based, have no technical requirements and, with the exception of motions for summary judgment, do not differentiate one type of motion from another. Further, this motion is mislabelled. It is not a true motion for summary judgment, but it is in the nature of a motion to dismiss <sup>4/</sup> (See Commission Rule 19:14-4.6).

The Association also argues that the motion does not comply with Commission Rule 19:14-4.2 which requires accompanying affidavits with the filing of all motions, but no affidavits were filed by the Respondent. No purpose would be served by rigidly requiring an affidavit in this matter.

As Counsel for the Respondent argued, "Now, what would I have to do in a form of an affidavit that I have not done by my motion? I am merely saying there are no facts to dispute here because no facts are alleged." No defenses have been raised nor have any facts been alleged which would have been clarified by an affidavit. <sup>5/</sup> Compliance with this rule where the motion is in the nature of a motion to dismiss is a mere technical formality.

<sup>3/</sup> Rather, see the National Labor Relations Board Rules and Regulation, Series 8 § 102.24 et seq.

<sup>4/</sup> It is noted that the Rules of Court allow a motion to dismiss (for failure to state a claim upon which relief can be granted) to be treated as a Motion for Summary Judgment, R. 4:6.2 the reverse of the instant situation. Under R. 4:6.2 such a motion shall be made before filing an answer.

<sup>5/</sup> The Rules of Court do not require affidavits even with motions for summary judgment, R. 4:46.2.

Therefore, in order to best effectuate the policies of the Act, including prompt settlement of labor disputes <sup>6/</sup> and pursuant to Commission Rule 19:19-1.1, the Hearing Examiner will not dismiss the motion. Rather the undersigned will consider the merits of the motion and convert the same a motion to dismiss.

The Association's second argument is the complaint is sufficiently specific to satisfy Commission Rule 19:14-2.1; namely, the allegations, if true may constitute an unfair practice. For the purposes of a motion to dismiss the defendant admits the truth of all facts as well as all legitimate inferences which can be drawn from those facts. In civil practice, pleadings alleged to state no cause of action or defense will be liberally construed in favor of the pleader. <sup>7/</sup>

The Association pleads that Harkey was an employee of the Board. He was the Association's chief negotiator and discriminatory action was taken against him; he was denied the position of department chairman after the Superintendent recommended him for the position; the employer knew of Harkey's Association activity; Board members admitted so at the Board meeting on April 7 and knowledge of employee Association activity can also be inferred from the allegation that he was chief negotiator.

The Respondent's contention that the complaint's allegation are merely hypothetical apparently goes to the remarks of the Board members on April 7, since the complaint's description of the statements does not show specific intent to discourage employee association activity; it is argued the whole complaint must fall. The Commission has held that evidence of an employer's specific intent is not a pre-requisite to a finding of an (a) (3) violation where the natural consequence of the employer's action is the discouragement of Association activity. In re College of Medicine and Dentistry, P.E.R.C. No. 76-46, 2 NJPER 101.

I am satisfied that the complaint meets the Commission's standard that the allegations if true may constitute an unfair practice.

This brings us to the other contention of the employer. The Association failed to adhere to Commission Rule 19:14-1.3(c) which requires that all charges

<sup>6/</sup> N.J.S.A. 34:13A-2.

<sup>7/</sup> Kelly v. Hoffman, 137 N.J.L. 695, Baldwin Construction Co. v. Essex Board of Taxation, 24 N.J. Super 252 (Law Div. 1952) aff'd 27 N.J. 240 (1953), Evan-gelista v. Public Service Coordinator Transport, 7 N.J. Super 164, (App. Div. 1950)

include,

A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated. 8/

The requirements of this rule are different from and, to an extent, independent of Commission Rule 19:14-2.1. Here the Association alleged particular acts -- two Board members made certain statements. Pursuant to the rule, they must provide the names of the persons who committed said acts, if known. 9/ This rule applies only to the acts constituting the unfair practice. An argument could be made that these statements do not constitute the unfair practice and, therefore, this rule does not apply. The Association, however, was the party who composed the charge pursuant to Rule 2.1. This very rule appears on the charge form as instructions for the completion of said form. It can only be assumed that the Charging Party believed these statements were part of the unfair practice, otherwise, they would not have been included in the charge.

One must distinguish between those procedural deficiencies which are merely technical in nature and those which have substantive implications. The improper identification of its motion and the lack of accompanying affidavits by the Respondent certainly constitute deficiencies, but demanding strict adherence to the rules at this juncture would only be counter-productive. As stated above the policy of the New Jersey Employer-Employee Relations Act is the prompt settlement of labor disputes. 10/ The act of denying the motion on procedural grounds would only serve to delay these proceedings for the Respondent would surely refile its motion and this entire procedure would have to be repeated. Yet curing these deficiencies would not further clarify the Board's motion.

The refusal of the Charging Party to furnish the names of those Board members who are alleged to have made certain statements can, potentially, have a

8/ This rule appears on the charge form as instructions for completion of the form.

9/ There is also a signed certification on the charge that, "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment."

10/ See f.n. 6, supra.

substantive impact upon the manner in which the Respondent can prepare for its case, yet no harm can come to the Petitioner by such a disclosure.

The failure of the Association to conform with the Commission Rules can do harm to the Respondent.

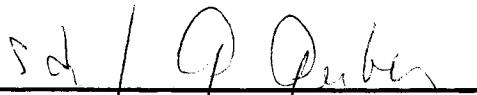
O R D E R

THEREFORE, IT IS ORDERED, to best effectuate the purposes of the Act, the Association shall, within ten days supply to the Respondent the names of those Board members who spoke to the question of Harkey's being denied the chairmanship on the basis of his organizational activities at the April 7 Board meeting. If the Association does not know the names of said Board members, they shall so state.

If the Association fails to supply said information within ten days that portion of the charge as incorporated in the complaint which reads,

During the course of this public meeting, two members of the Board spoke directly and indirectly to the question that Mr. Harkey was being denied the chairmanship on the basis of his organizational activities, not for any reasons relating to his professional competence.

will be dismissed from the complaint.

  
\_\_\_\_\_  
Edmund G. Gerber  
Hearing Examiner

DATED: December 15, 1976  
Trenton, New Jersey