

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TEANECK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-90-84

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

Charging Party.

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

Respondent,

-and-

Docket No. CE-86-8-100

TEANECK BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses Complaints based upon unfair practice charges filed by the Teaneck Board of Education and the Teaneck Association of Educational Secretaries, Local 4048, NJSFT, AFL/AFL-CIO against each other. The Association's charge alleged that the Board violated the Act when it: (1) unilaterally implemented a salary guide which had not been agreed to by the Association; (2) bypassed the Association negotiations team and communicated with the Association president Jean Zeleny; (3) commented on Zeleny's union conduct in her teacher evaluation and (4) unilaterally granted a salary increase to the payroll supervisor. The Board's charge alleged that the Association violated the Act when it failed to sign a collective negotiations agreement incorporating salary schedules that the Board and the Association had agreed to. The Commission finds that neither party proved its allegations by a preponderance of the evidence.

PERC NO. 87-85

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Docket No. CE-86-8-100

TEANECK BOARD OF EDUCATION,

Charging Party.

Appearances:

For the Teaneck Board of Education
Dr. Vincent Doyle, Board Secretary

For the Teaneck Association of Educational Secretaries
Dwyer & Canellis, Esqs.
(John J. Janasie & Michael E. Buckley, on the brief)

DECISION AND ORDER

On October 11 and December 20, 1985 the Teaneck Association of Educational Secretaries, Local 4048, NJSFT, AFT/AFL-CIO ("Association") filed an unfair practice charge and amended charge,

respectively, against the Teaneck Board of Education ("Board"). The charge, as amended, alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13 A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5),^{1/} when it: (1) unilaterally implemented a salary guide which had not been agreed to by the Association; (2) bypassed the Association negotiations team and communicated with Association president Jean Zeleny; (3) commented on Zeleny's union conduct in her teacher evaluation and (4) unilaterally granted a salary increase to the payroll supervisor.

On December 23, 1985, the Board filed an unfair practice charge against the Association. This charge alleges that the Association violated the act, specifically subsections 5.4(b)(3) and (4),^{2/} when it failed to sign a collective negotiations agreement incorporating salary schedules that the Board and the Association had agreed to.

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;

2/ These subsections prohibit 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; and (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

On December 2, 1985 and January 23, 1986, Complaints and Notices of Hearing and an order consolidating the unfair practice charges were issued. On December 14 and 31, 1985, the Board filed its Answer. It denied the material allegations contained in the Complaint. On February 14, 1986, the Association filed its Answer and also denied the charges contained in the Complaint.

On January 24, February 26 and March 3, 1986, Hearing Examiner Alan R. Howe conducted hearings. The parties examined witnesses, presented relevant evidence and argued orally.

On May 29, 1986, the Hearing Examiner issued his report and recommended decision, H.E. No. 86-60, 12 NJPER ___(___, 1986). He recommended dismissal of the Association's Complaint. First, he found the Association had not proven that the Board had unilaterally implemented the salary guide. Rather, he found that the parties agreed to the salary guide before it was implemented. The Hearing Examiner further found that the Board did not threaten or coerce the Association president and that her evaluation did not threaten or intimidate her. The Hearing Examiner also found that the Board lawfully granted a salary differential to a secretary who was assigned additional duties since the parties had negotiated and agreed to the increase. He also found that this aspect of the Complaint was untimely.

The Hearing Examiner further recommended, however, that the Commission find the Association violated subsections 5.4(b)(3) and (4) of the Act when it refused to sign a collective negotiations agreement incorporating the salary guides that the parties agreed to.

On June 24, 1986 the Association filed its exceptions. It asserts that the Hearing Examiner erred in: (1) finding that the Association agreed to compress the salary guide from 14 to 5 steps--the Association contends that it proposed to reduce the salary guide to 5 classifications, but no agreement was reached on this issue; (2) not finding that the parties had agreed that agreement was conditioned upon approval by the union's chief negotiator; (3) finding that the parties negotiated a 5.4% differential for payroll supervisor Lois Rothman; (4) interpreting the union negotiator's December 5, 1985 letter to the Board as a refusal to sign a negotiated agreement; (5) not finding that the Board did not present 1986-1987 and 1987-1988 salary guides to the Association for contract approval; (6) not finding that the Board's proposed salary guide did not comply with the parties' agreement to pay an 8.5% increase for the 1985-1986 year.

On July 21, 1986, the Board filed its response. It urges adoption of the Hearing Examiner's report and recommended decision. It also requested oral argument. We deny that request.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 5-25) are accurate. We adopt and incorporate them here. We do, however, clarify one fact. Finding of Fact No. 4 should note that it was the intent of the parties to compress, to five, the number of salary classifications, not steps.

We first consider whether the Board violated the Act when it unilaterally implemented salary guides on October 9, 1985. We

conclude that it did not for essentially the same reasons expressed by the Hearing Examiner: the parties agreed to the salary guides on August 16, 1985. Therefore, the Board did not act unilaterally; rather, it acted pursuant to its agreement with the Association. We add only these brief comments. We recognize that the parties did not sign the page on which the salary guide appeared. But they did sign a "sidebar" agreement reflecting that two individuals would be paid "off-guide" and the testimony found credible by the Hearing Examiner establishes that this "side-bar" was attached to the salary guide. We need not be concerned that it would have been a better practice to separately sign the two agreements -- the important fact is that the record, when viewed as a whole, establishes that the parties reached an agreement on the salary guides which the Board later implemented. Such conduct does not violate the Act. Nor was the agreement predicated on Association ratification. It is well settled that, in the absence of oral or written qualifying statements or like conduct, binding authority on the part of the negotiating teams could reasonably be inferred. Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 78-83, 4 NJPER 249,250 (¶4126 1978); Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975). There were no such qualifying statements and the Board could reasonably infer that the Association negotiating teams had binding authority to conclude the agreement on the salary guides. Finally, we do not believe that Zeleny's request that its chief negotiator review the guide for mathematical errors negates the Association's agreement.

His review was limited to correcting mathematical errors. He found none. Rather, he proposed different guides which the Board was not obligated to accept since it had reached agreement on the guides at the August 16 meeting. The important fact, however, is that the parties agreed to a salary guide which approximated the 8.5% figure. This was conditioned only upon the negotiator's review for mathematical errors which he failed to find. We do not believe it significant that the monies ultimately distributed may have been approximately \$4,000 short of the 8.5% salary increase. The Association did not establish that this shortage was the result of a mathematical error and there is nothing to suggest that the Board's explanation that it was the result of personnel changes subsequent to the August agreement was not correct.

The Association's related claim that the Board unilaterally granted Lois Rothman a salary differential is meritless. The salary guides agreed to on August 16, 1986, in plain language, continue the salary differential which Rothman had already been receiving. In short, the Board did not act unilaterally; rather, it acted in compliance with the parties' negotiated agreement.

We now consider the Board's claim that the Association violated subsections 5.4(b)(3) and (4) of the Act when it "failed and refused to sign a successor collective negotiations agreement [and]...still seeks to negotiate concerning the salary guides which they had previously agreed to." The Hearing Examiner found a violation based on his conclusion that the parties had reached agreement on the

salary guides for the first year of the agreement on August 16, 1985. We do not believe that this conclusion is sufficient to warrant a violation under the circumstances of this case. The parties had, in fact, agreed to a contract with a duration of two and a half years and the percentage terms had been agreed to and ratified. However, there had been no agreement on the salary guides for the second and third year of the contract, therefore there was no completed negotiated agreement for the Association to sign. Therefore, we dismiss that portion of the Complaint.

We also dismiss that portion of the Complaint which alleged that the Association violated the Act when it sought to negotiate salary guides which had already been agreed to. The record establishes that both parties voluntarily met after August 16 to reach an accommodation on the salary guide issue. Under these circumstances, it is not dispositive that a valid agreement had been reached on August 16 since both parties, in good faith, sought to settle their differences.

The final issue is whether the Board violated the Act in its conduct towards the Association president, Jean Zeleny. The Hearing Examiner found no violation and this recommendation was not excepted to. We agree that the Association failed to establish a violation. The first aspect to this charge pertains to conversations between Doyle, the Board's Business Administrator, and Zeleny pertaining to negotiations. These conversations were not coercive or threatening.

The second aspect of the charge pertained to an alleged evaluation which favorably commented upon Zeleny's activities as president of the Association. But this evaluation was not admitted into evidence and only vague testimony was elicited concerning it. Since the evaluation is not part of the record, we will dismiss this aspect of the Complaint.

ORDER

The Complaints are dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
December 22, 1986
ISSUED: December 23, 1986

H.E. NO. 86-60

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

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TEANECK ASSOCIATION OF EDUCATIONAL
SECRETARIES, LOCAL 4048, NJSFT,
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-and-

Docket No. CE-86-8-100

TEANECK BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did not violate §§5.4(a)(1), (3) or (5) of the New Jersey Employer-Employee Relations Act. The Charging Party Association failed to prove by a preponderance of evidence that the Respondent Board had unilaterally implemented a 1985-86 salary guide, following negotiations for a successor agreement, without first obtaining the ratification of the salary guide by the Association. The Hearing Examiner found that the Association had not manifested in its negotiations a condition precedent of ratification before a salary guide could become

effective and, thus, the Board was within its rights when it ratified and implemented the salary guide without ratification having occurred. The Hearing Examiner also found that the Board's Secretary did not threaten or coerce the President of the Association or negatively evaluate her. Finally, the Hearing Examiner found that the Board lawfully granted a salary increase to a Secretary who was assigned additional duties and that there was no obligation that this be negotiated with the Association before implementation.

Additionally, the Hearing Examiner recommends that the Commission find that the Respondent Association violated §§5.4(b)(3) and (4) of the Act by having persisted in seeking a change in the negotiated salary guide for 1985-86, notwithstanding that such negotiations were concluded at a meeting on August 16, 1985. By way of remedy, the Hearing Examiner ordered that the Association execute a successor agreement containing the negotiated salary guide upon demand.

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.

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Charging Party.

Appearances:

For the Teaneck Board of Education
Gerald L. Dorf, P.A.
(Gerald L. Dorf, Esq. & Lawrence Henderson, Esq.)

For the Teaneck Association of Educational Secretaries
Dwyer & Canellis, Esqs.
(John J. Janasie, Esq. & Michael E. Buckley, Esq.
on the brief)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public
Employment Relations Commission (hereinafter the "Commission") in

Docket No. CO-86-90-84 on October 11, 1985, by the Teaneck Association of Educational Secretaries, Local 4048, NJSFT, AFT/AFL-CIO (hereinafter the "Charging Party" or the "Association") alleging that the Teaneck Board of Education (hereinafter the "Respondent" or the "Board")^{1/} 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, after reaching basic agreement on a successor agreement to that which expired on June 30, 1985, the only issue outstanding was the construction of salary guides; the Board, notwithstanding the Association's rejection of salary guides proposed by it, unilaterally implemented the salary guides proposed by it on October 9, 1985; during the course of negotiations, representatives of the Board, including Vincent Doyle, the Board Secretary and Business Administrator, unilaterally communicated with a member of the Association's negotiating team, Jean Zeleny, seeking to influence her in negotiations; and during the course of negotiations, Zeleny received a job evaluation, which took into account her attitude and performance as a member of the Association's negotiating team; all

^{1/} The parties will be referred to as indicated notwithstanding that each party is a Respondent and a Charging Party in their respective Unfair Practice Charges, infra.

of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) of the Act. of the Act.^{2/}

In an amendment to its original Unfair Practice Charge, filed on December 20, 1985, the Association alleged that when the Board on October 9, 1985, unilaterally adopted its salary guides for the successor agreement, it provided an additional salary increase of 5.4% for Lois Rothman, the Payroll Supervisor and Secretary to Doyle, which had never been negotiated and agreed upon by the Association; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) of the Act, supra.

An additional Unfair Practice Charge was filed with the Commission on December 23, 1985, by the Board, Docket No. CE-86-8-100, alleging that on July 31, 1985, the parties reached an agreement to provide salary increases for the years 1985 through January 31, 1988, which was ratified by the parties and, subsequent to this agreement, the parties met to discuss the salary guides and an agreement on a salary guide for the 1985-86 school year was

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reached on August 16, 1985, and, notwithstanding the agreement reached by the parties, the Association has failed and refused to execute a successor collective negotiations agreement; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(b)(3) and (4) of the Act.^{3/}

It appearing that the allegations in the Association's Unfair Practice Charge, as amended, and those in the Board's Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, Complaints and Notices of Hearing, and an Order Consolidating the respective Unfair Practice Charges, were issued on December 2, 1985 and January 23, 1986. Pursuant to the Complaints and Notices of Hearing, hearings were held on January 24, February 26 and March 3, 1986, 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 the parties filed post-hearing briefs by May 15, 1986.

Unfair Practice Charges 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

^{3/} These subsections prohibit 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; and (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

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 Teaneck Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Teaneck Association of Educational Secretaries Local 4048, NJSFT, AFT/AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The last collective negotiations agreement between the parties was effective during the term July 1, 1982 through June 30, 1985 (J-1). This agreement included salary guides for each of the three years of the agreement, which contains 14 steps on each guide, divided between nine steps as to some classifications and five steps as to other classifications.^{4/}

4. Negotiations for a successor agreement to J-1 commenced in December 1984. Fougères R. Ferrier, the chief negotiator for the Association, testified that on May 22, 1985 the Association agreed to the Board's proposal to compress the 14 steps on the salary guides to five steps. Vincent Doyle, the Board Secretary and Business Administrator, testified to the same effect.

^{4/} There are 44 secretaries in the collective negotiations unit.

5. On June 25, 1985, the Association declared an impasse over salary guides (CP-1).

6. Aided by Commission Mediator Robert Weakley, the parties reached a tentative agreement, subject to ratification, on July 31, 1985 (CP-5). This tentative agreement included salary increases of 8.5% for the years 1985-86, 8.2% for the years 1986-87 and 3.7% for the six months, July 1987-January 1988, all of the foregoing to be calculated from an initial base of \$794,806 with salary guides to be constructed and agreed upon.^{5/}

7. The tentative agreement of July 31st was ratified by the Association on August 8, 1985 (R-6) and was approved by the Board on August 28, 1985 (R-5, p. 49).^{6/}

8. Doyle had agreed at the negotiations meeting on July 31, 1985, to prepare a salary guide for the first year (1985-1986). On August 7th he presented the Association's negotiating team with his proposed guide and Joan Bermingham, an Association negotiator, presented Doyle with a counterproposal to his salary guide.

9. Doyle's proposed guide was submitted to the Association's membership, along with the tentative agreement (CP-5), at a meeting on August 8, 1985, supra. The Association's members ratified the tentative agreement but rejected Doyle's proposed guide since some of the members were only receiving increases of 2% to 6%.

^{5/} Ferrier left for a one-month vacation on August 1, 1985.

^{6/} The Board contends that it also approved the salary guides on August 28th. This will be dealt with hereinafter.

10. There was considerable disputation between the parties as to whether the Association had a practice of separately ratifying salary guides vis-a-vis tentative agreements. Ferrier, who had negotiated three prior contracts on behalf of the Association, testified without contradiction that the prior negotiations practice had always been to ratify the guides separately. Jean Zeleny, the President of the Association since May 1984, confirmed this practice, pointing to a memo from her to the members of the Association on May 22, 1984, to ratify the salary guide for the third year of J-1 (CP-6) and thereafter advising the then President of the Board on May 31, 1984 (CP-7). Finally, Susan Meadows, a member of the Association's negotiating team, also testified that the unit members ratified the third year of the salary guide (J-1) in 1984). Doyle testified that he was not aware that the Association had had to ratify the third year salary guide in 1984. Margaret Angeli, the President of the Board, and one of its negotiators, testified that she was never advised by the Association that ratification of salary guides was required, having also been a Board negotiator in 1982.

11. After the Association's ratification meeting of August 8th, Zeleny sent a memo to Doyle and A. Spencer Denham, the Assistant Superintendent, advising them that the Association had reviewed the proposed salary guide and found that the figures did not present a true picture (CP-8). Zeleny stated that the Association members should not be asked to ratify "...until the inequities are corrected...."

12. On August 9, 1985, Zeleny sent a memo to all Association members, which noted that the Association had voted to ratify the contract and the salary increases for 2-1/2 years, pointing out, however, that the proposed percentages for distribution on the salary guide appeared to be disproportionate and, therefore, called a meeting for August 12th to "re-think the % distribution on the salary guide" (CP-9). Zeleny testified, however, that this meeting was never held.^{7/}

13. Based on what transpired at the meeting between Doyle and the Association's negotiating team on salary guides on August 7, 1985, supra, Doyle presented the Association with a revised proposed salary guide sometime after the August 7th meeting and before August 15th, which was subsequently used by the parties in a meeting on salary guides on August 16, 1985 (R-4). Doyle testified without contradiction that the notations and changes on Exhibit R-4 were made during the meeting on August 16th, infra. Thus, the Association received a clean copy of R-4 prior to the August 16th meeting.

14. Both parties agree that a meeting was held on August 16, 1985, attended by Doyle, Denham and Angeli on behalf of the Board and by Zeleny, Bermingham and Charlotte Shapiro on behalf of the Association. The purpose of the meeting was to attempt to reach

^{7/} Zeleny testified without contradiction that during this time period she spoke to Angeli about the inequities in the salary guide proposed by Doyle.

agreement on the salary guide for the first year of the agreement (1985-86). The testimony of the various representatives of the parties may be summarized as follows:

a. Zeleny testified that the meeting on August 16th lasted 1-1/2 hours and that the salary guides on which were discussed, involved only those previously submitted by Doyle and Bermingham. The only agreement reached at this meeting was a "side bar," which provided for payment off the salary guide for two secretaries, Irene Wielkocz and Lila Ross (CP-15). Zeleny testified that she willingly signed this "side bar" and that this was the only document signed at this meeting (1 Tr 133, 134). In connection with the necessity for ratification of the salary guide discussed at this meeting (see R-2 and R-4), Zeleny testified that she heard Doyle ask Bermingham if she could "sell this to your membership" and Bermingham replied that "she would have no problem," then referring to the fact that "a lot of people" had been unhappy because Wielkocz and Ross had not received an adequate increase previously (1 Tr 135, 136). Zeleny also testified that at the end of the meeting, referring to the discussion on the salary guide, she said to Doyle and Angeli, "These salary guides are not finished until Fugi (Ferrier) looks and approves them because I am not a mathematician" (1 Tr 133; 2 Tr 45). On cross-examination, Zeleny acknowledged that the Board had never been advised in writing that the Association had to approve the salary guide (2 Tr

43).^{8/} Also, Zeleny testified that she thought the negotiating team for the Association had the authority to conclude the salary guides but, after talking with other members, "...it still had to be voted on" (2 Tr 44; see also, 1 Tr 144).

b. Bermingham testified that a problem with the salary guide and its construction involved "reclassification" wherein too many people were put on a step of the guide and, with increments added, there was little money to disburse as increases for the other members of the unit (2 Tr 70, 71). Bermingham suggested "putting a stopper" or "a maximum," which she estimated would save \$1,000 per person in increments thereby providing more money "...with which to spread to the membership" (2 Tr 71). Bermingham said that Doyle and Denham indicated they would not be adverse to this suggestion and asked her if she "could sell it to the membership" (2 Tr 72). Bermingham responded only that if the membership approved it it would be a "fait accompli" (2 Tr 72). Bermingham acknowledged seeing R-2, Doyle's proposed five-step salary guide, at this meeting. She also acknowledged the discussion about the "side bar" (CP-15), stating that the "side bar" was the only document signed on that date. On cross-examination Bermingham insisted that even though the "side bar" (CP-15) contained salaries for the two secretaries, which must

^{8/} Ferrier testified that neither he nor anyone in the Association advised the Board that ratification of the salary guide would be required.

have referred to a guide, this did not indicate that a salary guide had been agreed upon by the parties on August 16th (2 Tr 92). When asked what she thought the "side bar" meant when she signed it, Bermingham testified that something else had yet to be concluded. Finally, and still on cross-examination, Bermingham acknowledged it may not have been the best way to proceed (2 Tr 95). Bermingham did not recall that Angeli said at the end of the meeting "...this now wraps it all up..." (2 Tr 96) and was not sure that Zeleny stated to the Board representatives that "...these guides must now be approved by the membership..." (2 Tr 99).

c. Doyle testified that the purpose of the August 16th meeting was "to put to bed" the salary guide for 1985-86. The salary guide (R-2) was the end product of the meeting and had been developed during the meeting from R-4, supra, which had been provided to the Association sometime between August 7th and August 15th (3 Tr 50, 57-63). The "side bar" (CP-15) had been attached to R-2 during the course of the meeting and was the only document signed by the parties on that date (3 Tr 50-52). Doyle insisted that it would not have been possible for the parties to agree upon the "side bar," which resulted in increases for two secretaries, without having already agreed upon the salary guide (3 Tr 53, 54). Admittedly, no signatures appear on the salary guide (R-2). Doyle pointed to the tentative agreement of July 31, 1985 (CP-5) as having been executed in the same fashion with signatures only on the second page (3 Tr 55). Doyle testified that during the

meeting, as he converted the calculations on R-4 to the guide which ultimately became R-2,^{9/} it totaled an 8.7% increase for the 1985-86 school year over 1984-85 and, thus, was 0.2% higher than the agreed upon figure of 8.5% for the first year. Doyle attributed the 0.2% discrepancy to the off-guide increases given by the "side bar" to Wielkocz and Ross but felt that this additional increase would be approved by the Board (3 Tr 70, 71). Doyle also testified that at the conclusion of the August 16, 1985, meeting he had no doubt but that agreement had been reached on a salary guide (3 Tr 68, 69). He did not deny Zeleny's testimony that Ferrier would have to check the mathematics, taking that to mean that if an obvious error had occurred in calculations it would be corrected (3 Tr 69). On cross-examination Doyle testified that, in response to a question posed by Angeli, either Zeleny or Bermingham stated that they could conclude the salary guide even though not everybody will be happy with the decision (3 Tr 127). Finally, Doyle testified that neither he nor Denham asked Bermingham if she could "...sell that to your membership..." (3 Tr 124).

d. Angeli testified that the "side bar" (CP-15) was the second page of what was agreed upon at the meeting on August 16th, the salary guide (R-2), having been the first page (3 Tr

^{9/} Doyle stated that it was mathematically impossible to give every secretary the same number of dollars or the same percentage increase and that there never was an agreement that this would occur (3 Tr 45-47).

156). She stated that the salary guide (R-2) was agreed upon at that meeting as was the "side bar" (3 Tr 156, 157). Angeli testified further that she asked the representatives of the Association if they had the authority "...to sign this document..." and she was told that they did, referring specifically to Birmingham (3 Tr 154, 155, 160).

e. Denham's testimony regarding the August 16th meeting was limited, stating that agreement was reached on the two-page document (R-2 & CP-15), that everyone shook hands and negotiations had been concluded except for Ferrier having the opportunity to make sure that Doyle's arithmetic was correct (3 Tr 178, 179)

15. Ferrier testified, and Zeleny corroborated, that while on vacation he received a packet of materials from Zeleny, which was mailed sometime around August 18 or August 19, 1985, and which included details on what had happened at the meeting of the parties on August 16, 1985, supra. This evidence is not conclusive since there was little testimony about the contents of the packet and neither the cover letter nor the packet was introduced in evidence.

16. As previously found, Zeleny sent a letter to Angeli on August 27, 1985, advising her that the Association had on August 8th voted to approve the agreement and Zeleny requested notification as soon as the Board ratified the agreement (R-6). Angeli testified that R-6 was hand-delivered to her home on August

27th and that she called Doyle and told him to place the contract on the agenda for the Board meeting of August 28, 1985. Doyle also testified that Angeli's receipt of R-6 resulted in the contract being placed on the Board's agenda for ratification on August 28th.

17. The minutes of the Board meeting of August 28, 1985 (R-5) indicate under "Meeting Notice" that the notice of this "special" meeting was posted at 9 a.m. on August 16, 1985, which was prior to the negotiations session held by the parties on that date to agree upon salary guides, supra. Doyle testified that the posting covered only topics to be covered such as personnel, curriculum, etc. and that the addition of Item 27 under "Personnel" permitted the Board lawfully to approve "...the terms of the negotiated contract between the Board and the...Association... representing secretarial personnel for period July 1, 1985 to January 31, 1988..." (R-5, p. 49; 3 Tr 78, 80-82). The Board's action on Item 27 was unanimous and, according to Doyle, Angeli and Denham, the Board's action included approval of the salary guides (3 Tr 64-66, 160, 161, 179, 180). Doyle's explanation for the absence of any reference to salary guides in Item 27 of the minutes, supra, was that this was a "clean up" meeting before the beginning of the next school year and that it takes Denham approximately three weeks to prepare a detailed agenda item such as was done for the Board's meeting on October 9, 1985 which is contained in the minutes of that meeting (3 Tr 96-98, 141-45,

180-82; CP-16, p. 38; Item 58 "Personnel"). Denham testified without contradiction that in prior years there were one or two instances where the Board acted on a motion approving a contract without the salary guide also being approved at the same time but this was so noted in the motion. The Board's ratification of August 28th, according to Denham, was not one of these instances (3 Tr 180).

18. When Ferrier returned from vacation on September 1, 1985, he contacted Zeleny and the other members of the Association's negotiating team to "...work out a second guide" (1 Tr 28, 29). On September 10th Ferrier and all members of the Association's negotiating team except Zeleny met with Doyle. Zeleny had arranged for this meeting through Doyle's secretary, Shirley Edmonds (CP-10). According to Bermingham, Ferrier came in with new figures and Doyle said that they were "way off the mark" (2 Tr 77). She said that Ferrier told Doyle that he would "...work up other figures " (2 Tr 77). Ferrier's testimony was that Doyle said that he didn't have to cost out Ferrier's guide because the numbers were too high. Doyle testified that Ferrier's presentation of the guides was as if the August 16, 1985 meeting, supra, had never occurred (3 Tr 76).

19. About one week later Ferrier presented a new guide to Doyle but received no reaction (1 Tr 32, 33).

20. Having received proposed salary guides from Zeleny on September 30, 1985,^{10/} Doyle and Denham sent a memo to Zeleny on October 2, 1985 (CP-17). In this memo Doyle and Denham first pointed out that an agreement on a salary guide had been reached at the August 16, 1985 meeting, supra, and that subsequent meetings and proposals "...are not terribly relevant...." In this memo Doyle and Denham also responded to the specifics of Zeleny's proposed salary guide, noting that it involved an 8.8% increase rather than an 8.5% increase as negotiated and that there were problems in the steps within each guide, increments between steps and the fact that numerous individuals had been "replaced" on steps. It was also noted that Ferrier's guides "included a 10.5% increase." The memo concluded with a reiteration that the "...guides have been agreed to."

21. Thereafter on October 8, 1985, Ferrier wrote to the attorney for the Board, protesting an item on the agenda of the Board meeting scheduled for October 9, 1985 "...to implement a salary guide for secretaries" (CP-2). The Board acted on October 9th, adopting a resolution for salary adjustments to secretarial

^{10/} For reasons never made known to the Hearing Examiner, the Association never offered in evidence a single salary guide proposed by it to to the Board. The belated attempt to introduce a proposed salary guide as Exhibit "B" to the Association's post-hearing brief is rejected. Thus, the Hearing Examiner has no basis for challenging the correctness of R-2 or the notations on R-4, the latter of which on its face calculates out to between 8.4% and 8.7%.

personnel for the period July 1, 1985 or September 1, 1985 through June 30, 1986 (CP-16).

22. On October 29, 1985, Zeleny sent a memo to Denham, advising him that the Association has not accepted the new salary guides and that the matter is to be settled by "PERC" (CP-14). The initial Unfair Practice Charge had been filed on October 11, 1985.

* * * *

23. With respect to ¶9 of the initial Unfair Practice Charge (C-1), which alleges that Doyle unilaterally communicated with Zeleny during negotiations in order to influence her as a member of the negotiating team, Zeleny testified that he did so but that she did not feel it was incorrect, adding, however, that her union did (2 Tr 21, 22, 26, 27). Doyle acknowledged that he and Zeleny had had many conversations during negotiations, some of which involved union matters, but Doyle then testified credibly that he never conducted himself in any way as to threaten or coerce her (3 Tr 41, 42).

24. The Association also alleged in ¶10 of the initial Unfair Practice Charge that during negotiations Zeleny received an evaluation by Doyle wherein Doyle took into account Zeleny's attitude and performance as a member of the negotiating team (C-1). Doyle admitted that in his evaluation of May 15, 1985, he included an opinion of Zeleny's actions during the negotiations process, which he felt indicated that she was doing a superior job and manifested leadership (3 Tr 135, 136). Doyle testified

credibly that there was no intention to chill Zeleny's taking a hard line in negotiations, and that he saw his comment as being a positive reinforcement of Zeleny's conduct in negotiations (3 Tr 137, 138).

* * * *

25. The Association alleges in ¶4 of the amended Unfair Practice Charge of December 20, 1985 (C-3), that the Board negotiated in bad faith when it provided Lois Rothman with a 5.4% differential in the salary guide implemented on October 9, 1985. The Board on March 13, 1985, had increased the salary of Rothman by 5.4% and she was notified of this change on March 14, 1985 (R-3; CP-3). Doyle testified that this salary increase was given because of the expansion of Rothman's duties as Payroll Supervisor (3 Tr 34-36). Ferrier testified that the 5.4% differential increase for Rothman was never agreed to in negotiations, however, it was discussed at the August 16, 1985 negotiations meeting, supra, and appears on R-2 and R-4. This was confirmed by Bermingham, who also discussed it personally with Rothman (2 Tr 73, 78, 79).

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate
§§5.4(a)(1) or (5) Of The Act When It
Implemented The 1985-86 Salary Guide
(R-2) At Its Meeting On October 9, 1985.

There is no disputing that the parties separately ratified the basic economic provisions of a two and one-half year agreement, containing salary increases of 8.5%, 8.2% and 3.7% for the years July 1, 1985 through January 31, 1988, with an initial base of

\$794,806. The sole dispute as to the §5.4(a)(5) aspect of the Association's charge is whether or not a salary guide for the first year of the agreement was agreed upon by the parties. The Hearing Examiner concludes that such an agreement was reached, based on the analysis set forth hereinafter.

It is true that the Association adduced evidence that it had in the past had a practice of separately ratifying salary guides as distinct from the tentative agreements, the latter setting forth the basic economic terms as occurred in this case on July 31, 1985 (CP-5). The Hearing Examiner's findings as to such a practice are set forth in Finding of Fact No. 10, supra. However, it is less than clear that the Association made known to the Board and its representatives that it had a longstanding practice of separately ratifying salary guides as evidenced by the testimony of Doyle and Angeli (see Finding of Fact No. 10, supra). Reinforcing the probable lack of knowledge by the Board's representatives of the Association's alleged past practice of salary guide ratification is the following: (1) the testimony of Zeleny that she thought the Association's negotiating team had the authority to conclude salary guides until she spoke with other members; (2) the testimony of Ferrier that neither he nor anyone in the Association ever advised the Board that ratification of the salary guide by the Association was required; (3) the testimony of Bermingham that she was not sure that Zeleny stated to the Board's representatives on August 16, 1985 that the guides had to be approved by the Association's membership;

and (4) the credible testimony of Doyle that he was not aware of the internal particulars of the Association regarding contracts and salary guides (3 Tr 132) and that of Denham, who, when asked if he had ever been made aware that there was a need for the Association to ratify salary guides, replied that he really did not believe so, adding that he felt the Association had the authority to conclude negotiations on August 16, 1985 (3 Tr 185) (see Finding of Fact No. 14, supra).

The Commission in Black Horse Pike Reg. Bd.Ed., P.E.R.C. 78-83, 4 NJPER 249 (¶4126 1978) had occasion to deal with the very issue at hand. The Commission first noted that in order for collective negotiations to be effective it is essential that each participant know with certainty the extent of the opposing negotiating team's authority, stating that it would consider "...only whether, during the course of the particular negotiations...there was 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). The Commission then said, in connection with past practice of ratification:

...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..." (4 NJPER at 250).

In both Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975) and East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279 (1976) the Commission found, inter alia, that in the absence of express qualifying conditions, the employee representative could reasonably presume that the employer negotiators were clothed with apparent authority to conclude a binding agreement. In each case the Board was ordered to execute the agreement reached by its negotiators.

Given the evidence set forth above, regarding the Association's alleged past practice of separate ratification of salary guides, the Hearing Examiner finds and concludes on the basis of the above three Commission decisions that the Association has failed to prove by a preponderance of the evidence that its alleged past practice of separate salary guide ratification was made known to the Board and its representatives when they entered into the critical meeting of August 16, 1985. Further, the conduct of the Association's representatives at the August 16th meeting failed to convey in any clear and meaningful manner the fact that the Association's negotiating team had to submit the results of the August 16th meeting on salary guides to the Association membership for ratification before the salary guides negotiated at that meeting could become effective.

In so concluding, the Hearing Examiner has credited the testimony of Doyle that at the conclusion of the August 16th meeting he had no doubt but that an agreement had been reached on the salary

guide (3 Tr 68, 69), notwithstanding that he did not deny Zeleny's testimony that Ferrier would have to check the mathematics, which he took to mean that if there was an obvious error in calculations it would be corrected. Further, the Hearing Examiner credits Doyle's testimony on cross-examination that either Zeleny or Bermingham stated to Angeli that they could conclude the salary guide even though not everybody would be happy with the decision (3 Tr 127). Also, the Hearing Examiner credits the testimony of Angeli that when she asked the Association representatives if they had the authority "to sign this document" she was told that they did, referring specifically to Bermingham (3 Tr 154, 155, 160). Finally, the Hearing Examiner credits the testimony of Doyle that neither he nor Denham asked Bermingham if she could sell the guide to the Association's membership (3 Tr 124). The Hearing Examiner also credits Angeli's testimony that the salary guide (R-2) was agreed upon at the August 16th meeting as well as the "side bar" (3 Tr 156, 157).^{11/}

One additional aspect of the August 16, 1985 meeting that deserves comment is the way that the events unfolded both before and during the date of that meeting. Doyle had presented a salary guide to the Association's team on August 7, 1985 and Bermingham had made

^{11/} The testimony of Doyle and Angeli, supra, has been credited because of the Hearing Examiner's determination that their version of what occurred at the August 16th meeting seems inherently more probable than the contrary versions of Zeleny and Bermingham.

a counterproposal (see Finding of Fact No. 8, supra). Doyle's salary guide was rejected at a meeting of the Association's membership on August 8, 1985, notwithstanding that the same membership ratified the economic terms set forth in the tentative agreement (see Finding of Fact No. 9, supra). Zeleny, after the ratification meeting, sent a memo to Doyle and Denham, expressing the dissatisfaction of the membership over inequities (see Finding of Fact No. 11, supra). Zeleny testified without contradiction that she also spoke to Angeli about the equities in the salary guide proposed by Doyle (see Footnote No. 7, supra). Between August 7th and August 16th, Doyle presented the Association's negotiating team with a clean copy of a new proposed salary guide (R-4), which ultimately became the negotiated salary guide of August 16th (R-2).

When the parties met on August 16th, they worked from R-4 and Doyle ultimately produced, based on the discussions at that meeting, the final salary guide (R-2). The Hearing Examiner has found as a fact that R-2 calculated out to the increase between 8.5% and 8.7% with 0.2% attributed to the off-guide increases provided by the "side bar" agreement for Wielkocz and Ross (see Finding of Fact No. 14c, supra). Thus, when the parties agreed to R-2, the overall increase for the 44 secretaries represented by the Association was extremely close to the 8.5% salary increase negotiated for the 1985-86 school year as set forth in CP-5, supra. The Hearing Examiner has no doubt that although no signatures or initials of the parties appear on R-2 it was the subject of mutual agreement on

August 16, 1985. The Hearing Examiner does not accept the testimony of the witnesses for the Association that, because they signed only the "side bar" agreement (CP-15), this somehow indicates that there was no agreement on R-2, the negotiated salary guide. The Hearing Examiner is persuaded by the argument of the Board and its witnesses that the "side bar" would have no meaning in terms of the figures contained thereon unless there was an agreed upon salary guide to which the "side bar" could meaningfully relate.

Thus, we come to the Board's ratification meeting of August 28, 1985. The Hearing Examiner credits the uncontradicted testimony of Angeli and Doyle that the matter of contract ratification was placed on the agenda at the last minute when Angeli received from Zeleny on August 27, 1985 a letter stating that the Association had on August 8th voted to approve the agreement. Zeleny's having sent this letter on August 27th, eleven days after the August 16th meeting, indicates to the Hearing Examiner that it is reasonable to infer that Zeleny was advising Angeli and the Board of the membership's ratification of the tentative agreement on August 8th and, implicitly, the Association negotiating team's approval of the salary guide and "side bar" on August 16, 1985. Hence, the Hearing Examiner concludes that the Board members were advised on August 28th that they had before them the question of ratification of both the tentative agreement and the salary guide for the first year.

The Board's ratification of the contract on August 28th, and its subsequent implementation of the negotiated salary guide on October 9, 1985, are totally consistent with one another. The attempt of the Association to generate additional salary guides in negotiating efforts on and after September 1, 1985 are of no moment and do not lend support to the allegation that the Board violated §§5.4(a)(1) and (5) of of the Act. The events on and after September 1, 1985, involving the Association, will be referred to again hereinafter.

The Hearing Examiner notes finally, in connection with this aspect of the case, that the Association at no time introduced in evidence any of its proposed salary guides. The Hearing Examiner has rejected the belated attempt of the Association to introduce a proposed salary guide as Exhibit "B" to the Association's post-hearing brief. Plainly, this is not evidence on the record and, in the absence of a motion granted to reopen the record, Exhibit "B" cannot be considered. The same is true of Exhibit "A." to the post-hearing brief of the Association.

Based upon the foregoing discussion and analysis, the Hearing Examiner concludes that the Association has failed to prove by a preponderance of the evidence that the Board violated §§5.4(a)(1) and (5) of the Act and, accordingly, the Hearing Examiner will recommend dismissal of these allegations in the Complaint (C-1).

The Association Violated §§5.4(b)(3)
And (4) Of The Act When It Persisted In Its
Claim That A Salary Guide For 1985-86
Had Not Been Agreed Upon On August 16, 1985
And An Order To Execute The Negotiated
Agreement, Including The 1985-86 Salary
Guide, Upon Demand, Is Appropriate

An analysis of the evidence up to and including October 9, 1985, supra, leads ineluctably to the conclusion that the Association has violated §§5.4(b)(3) and (4) of the Act. The conclusions reached hereinafter follow inevitably from the finding that the Board did not violate §5.4(a)(5) of the Act, supra.

The Board, as noted above, had every reason to rely upon the apparent authority of the Association's negotiators at the crucial meeting on August 16, 1985: See Bergenfield and East Brunswick, supra. The Hearing Examiner is fully persuaded that there was a meeting of the minds on August 16th and that a salary guide (R-2) was negotiated and agreed upon, having been extrapolated from Exhibit R-4, which had previously been submitted to the Association by Doyle. The "side bar" (CP-15), which was executed by the parties, clearly had to be dependent upon an agreement having been reached contemporaneously on the salary guide (R-2). The evidence reveals clearly that the Association representatives, including Ferrier, had never clearly communicated to the representatives of the Board's negotiating team that they lacked authority to consummate an agreement on a salary guide in the absence of membership ratification, i.e., there was no condition precedent to ratification. Zeleny's statement on August 16th that Ferrier had to approve the mathematics of the negotiated salary

guide involved only a ministerial act. Finally, the Board and its representatives were clearly entitled to consider Zeleny's letter of August 27, 1985, to Angeli (R-6) as an affirmation that a complete agreement had been reached, which prompted Angeli to instruct Doyle to place the matter on the agenda of the Board's meeting of August 28, 1985.

The Association's conduct between September 1 and October 9, 1985, provides further evidence of the Association's bad faith. Instead of merely having Ferrier check out the mathematical calculations based upon R-2, the Association in several September meetings with Doyle sought to submit new guides, which were sufficiently in excess of the negotiated increase of 8.5% for the 1985-86 school year that Doyle and Denham were impelled to send Zeleny a memo on October 2, 1985 (CP-17), rejecting these belated post-agreement efforts on the part of the Association. CP-17 sets forth the specifics of the Board's objection to the belated efforts of the Association in proposing new salary guides.

Thus, the Board was completely within its legal rights on October 9, 1985 when the specific line-by-line increases for the 1985-86 school year were ratified pursuant to the agreed upon salary guide of August 16, 1985 (CP-16). The Hearing Examiner has previously rejected the belated attempt by the Association in its post-hearing brief to make part of the record in this case the Association's analysis of CP-16, supra.

The Association in its brief complains that the Board's Unfair Practice Charge must be dismissed since the Board did not present to the Association the final successor agreement for signature. The Hearing Examiner rejects the request to have the Board's Unfair Practice Charge dismissed for this reason. It is noted that the Board in its reply brief acknowledges that no agreement was submitted to the Association for signature, pointing out that on December 5, 1985, Ferrier wrote to the Board's attorney, stating, inter alia, that he could not arrange for the execution of the agreement until the unfair labor practice charge herein involved was resolved (R-1). Obviously, the law does not require a party to perform a futile act, namely, submitting to the Association a final successor agreement for execution when the Association has stated that it would not execute such an agreement until the instant matter is "resolved."

Thus, having found that the Board is excused from submitting a final successor agreement to the Association for signature, the Hearing Examiner has the clear authority to order the Association to execute a final successor agreement, containing the 1985-86 salary guide, upon the Board making a demand upon the Association so to do. Since the requisite documents exist for the preparation of a complete successor agreement, namely, J-1, CP-5,

CP-16 and R-2, there is no impediment to the Board's submitting to the Association such a final successor agreement for execution.^{12/}

Accordingly, based on the foregoing, the Hearing Examiner will recommend an appropriate order.

The Board Did Not Violate §§5.4(a)(1) And (5) Of The Act When It Granted Lois Rothman A 5.4% Salary Differential On March 13, 1985, And/Or The Association's Amended Unfair Practice Charge Is Time-Barred Under §5.4(c) Of The Act.

The matter of Lois Rothman having received a salary increase on March 13, 1985 as a result of a promotion and the assumption of additional duties (3 Tr 33, 34, 106, 107; CP-3; R-3) can be disposed of on the merits as well as on the statute of limitations under §5.4(c).

Taking first the statute of limitations, which the Hearing Examiner can raise sua sponte^{13/} the operative event was March 13, 1985 and the amended Unfair Practice Charge (C-3) was not filed until December 20, 1985, clearly more than six months later. The Association knew of Rothman's salary increase during negotiations in or around March 1985 but did nothing until December 20th. It was the action of the Board on March 13, 1985 that resulted in the 5.4%

^{12/} There is ample Commission precedent for ordering a party to execute a negotiated agreement: As to employers, see Bergenfield and East Brunswick, supra, and as to employee representatives, see Bergen Co. Prosecutor's Office, P.E.R.C. No. 83-90, 9 NJPER 75 (¶14040 1982) and Spotswood Bd. of Ed., P.E.R.C.No. 86-34, 11 NJPER 591 (¶16208 1985).

^{13/} See Twp. of Teaneck, P.E.R.C. No. 81-142, 7 NJPER 351 (¶12158 1981), aff'd App. Div. Docket No. A-4891-80T2 (1982).

differential for Rothman being provided in the negotiated salary guide (R-2) on August 16, 1985. Doyle testified without contradiction that this differential for Rothman was going to continue into the 1985-86 school year when the base figure was computed in August 1985, implementing the 8.5% salary increase for that year. Thus, it is clear that the Association was on sufficient notice to file a timely unfair practice charge regarding any alleged unilateral action of the Board in connection with Rothman, which might constitute a violation of §§5.4(a)(1) and (5) of the Act.

Even without resort to dismissing the amended Unfair Practice Charge on the ground that it was untimely filed, it is clear that the Rothman's differential was fully negotiated during the meeting of the parties on August 16, 1985, as evidenced in footnote 2 of Exhibit R-2, which states, "Retains the existing (1984-85) differential of payroll supervisor = 5.4%." Rothman being the "Payroll Supervisor," there was no mistaking that Rothman was the person referred to in this footnote to R-2, supra.

Thus, either on the merits or on the statute of limitations defense, the Charging Party has failed to prove by a preponderance of the evidence that the Board violated §§5.4(a)(1) and (5) of the Act when it continued the 5.4% salary differential for Lois Rothman into the 1985-86 school year.

The Board Did Not Violate §§5.4(a)(1) or (3) Of
The Act By The Conduct Of Vincent Doyle
Toward Association President Jean Zeleny

There are two aspects to the §5.4(a)(3) aspect of the Unfair Practice Charge. First, it is alleged in ¶9 of the Association's initial Unfair Practice Charge (C-1) that during negotiations Doyle sought to influence Zeleny in her role as a member of the negotiating team by unilaterally seeking her out and communicating with her. Secondly, the Association alleges in ¶10 of the initial Unfair Practice Charge (C-1) that during the course of negotiations Zeleny received a job evaluation by Doyle, who took into account Zeleny's attitude and performance as a member of the negotiating team.

The evidence indicates clearly that Doyle and Zeleny were in close proximity during any given working day and would in the course thereof engage in conversations, both personal and with regard to negotiations (2 Tr 22-26). Zeleny testified that the conversations between her and Doyle were friendly and although she did not personally feel coerced or threatened in any way, she says that "My union did..." (2 Tr 27).

Disposing of ¶9 of the Unfair Practice Charge, supra, the Hearing Examiner finds that Ridgefield Park Bd. of Ed., P.E.R.C. 84-152, 10 NJPER 437 (¶15195 1984), which relied on Black Horse Pike,^{14/} is dispositive. In Ridgefield Park the Commission held that a school principal's brief exchange with the Association's

^{14/} See Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981).

vice-president and grievance chairperson, during which the principal questioned whether this latter position would compromise her objectivity on an Advisory Council, and then indicated that maybe she should resign, did not violate §§5.4(a)(3) of the Act. It was noted that the principal's comments were within the sphere of permissible criticism and discussion under Black Horse Pike, supra. The Commission also noted that the principal did not threaten any employees, change any terms or conditions of employment, or seek to undermine the exclusive representative status of the Association. Finally, it was noted that the principal's exchange "...was brief, non-coercive, and a match between equals..." (10 NJPER at 438).

It is obvious from the instant record that Doyle did not threaten or coerce Zeleny and that their relationship on a day-to-day basis was a "match between equals..."

As to ¶10 of the charge, supra, Doyle's explanation was completely satisfactory as to why he made his comments on her May 15, 1985 evaluation, regarding her actions in the negotiating process. On cross-examination Doyle stated that he felt that Zeleny had lent some very valuable service to her membership and the Association, as well as the school district, and, that during the course of what had been amicable negotiations, he felt that Zeleny was demonstrating "leadership" (3 Tr 135, 136). Doyle denied that any of his comments might chill Zeleny from taking a hard line in negotiations, adding that he saw his comments as being "a positive reinforcement" (3 Tr 137, 138).

The Hearing Examiner concludes that even without ever seeing the instant evaluation, which was not offered in evidence, the testimony of Doyle makes clear that there was nothing whatever in it which could constitute a violation of the Act. See Black Horse Pike, supra; but cf. Commercial Twp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd. App. Div. Docket No. A-1642-82T2 (1983) and Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-120, 10 NJPER 266 (¶15130 1984).

For the foregoing reasons, the Hearing Examiner will recommend dismissal of the allegations that the Board violated §§5.4(a)(1) and (3) 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 Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) or (5) when it implemented the agreed upon salary guide (R-2) at its meeting on October 9, 1985.
2. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) or (5) when it granted Lois Rothman a 5.4% salary differential on March 13, 1985.
3. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) or (3) by the conduct of Vincent Doyle toward Association President Jean Zeleny, i.e., Doyle did not coerce Zeleny or threaten her in any way either in day-to-day conversations or in her May 15, 1985 evaluation.

4. The Respondent Association violated N.J.S.A. 34:13A-5.4(b)(3) and (4) when it persisted in its claim that a salary guide for 1985-86 had not been agreed upon on August 16, 1985.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Association cease and desist from:

1. Refusing to negotiate in good faith with the Board by persisting in its claim that a salary guide for the 1985-86 school year had not been agreed upon on August 16, 1985.

2. Refusing to execute, upon demand, a successor collective negotiations agreement, containing the negotiated 1985-86 salary guide.

B. That the Respondent Association takes the following affirmative action:

1. Forthwith execute, upon demand, a successor collective negotiations agreement, containing the agreed upon 1985-86 salary guide.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days upon receipt what steps the Respondent Association has taken to comply herewith.

C. That the Unfair Practice Charge, as amended, alleging violations of the Act by the Respondent Board, be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

DATED: May 29, 1986
Trenton, New Jersey

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 our employees that:

WE WILL NOT refuse to negotiate in good faith with the Board by persisting in its claim that a salary guide for the 1985-86 school year had not been agreed upon on August 16, 1985.

WE WILL NOT refuse to execute, upon demand, a successor collective negotiations agreement, containing the negotiated 1985-86 salary guide.

WE WILL forthwith execute, upon demand, a successor collective negotiations agreement, containing the agreed upon 1985-86 salary guide.

Teaneck Association of Educational Secretaries,
Local 4048, NJSFT, AFT/AFL-CIO
Public Employee Representative

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 James Mastriani, Chairman, Public Employment Relations Commission, 495 W. State Street, Trenton, New Jersey 08618, Telephone (609) 292-9830