

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE BOARD OF EDUCATION and
OLD BRIDGE EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-87-51-113

MARY A. CARRINGTON,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the Old Bridge Education Association's motion to dismiss a complaint filed by Mary A. Carrington against the Association. Carrington's charge alleged that the Association violated the New Jersey Employer-Employee Relations Act when it pressured the Board to rescind a negotiated increase differential for teachers with doctorates to retaliate against Carrington for activity criticizing the Association president and defamed and threatened Carrington in the Association newsletter for filing the original unfair practice charge. The Commission finds that Carrington submitted sufficient evidence to show that the Association, because of its personal animosity towards Carrington, deprived her of monies that she otherwise would have received. The Commission remands the matter to a hearing examiner for further proceedings.

The Commission, however, grants the Old Bridge Board of Education's motion to dismiss a complaint filed by Carrington. The complaint against the Board alleges that it violated the Act when it colluded with the Association and agreed to settle an unfair practice charge filed by the Association by rescinding the agreed-upon differential for teachers with doctorates. The Commission finds that the complaint should be dismissed against the Board because there is nothing in the evidence to indicate that the Board acted in bad faith in agreeing to the settlement of the unfair practice charge.

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Appearances:

For the Respondent Board, Wilentz, Goldman & Spitzer, Esqs.
(Steven J. Tripp, of counsel)

For the Respondent Association, Oxfeld, Cohen, Blunda,
Friedman, Levine & Brooks, Esqs. (Sanford R. Oxfeld, of
counsel)

For the Charging Party, Mary A. Carrington, pro se

DECISION AND ORDER

On February 10, March 17 and March 24, 1987, Mary A. Carrington filed unfair practice charges and amended charges, respectively, against the Old Bridge Education Association ("Association") and the Old Bridge Board of Education ("Board"). The charge, as amended, alleges the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(b)(1) and (5),^{1/} when it

^{1/} These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Violating any of the rules and regulations established by the commission." The charging party originally alleged other subsection violations, but dropped those claims at the hearing.

pressured the Board to rescind a negotiated increase in the differential for teachers with doctorates to retaliate against Carrington for activity criticizing the Association president, and defamed and threatened Carrington in the Association newsletter for filing the original unfair practice charge. The charge, as amended, alleges the Board violated the Act, specifically subsection 5.4(a)(1),^{2/} when it colluded with the Association and agreed to settle an unfair practice charge filed by the Association by rescinding the agreed upon differential for teachers with doctorates.

On March 9, 1987, a Complaint and Notice of Hearing issued.

On September 29 and 30, 1987, Hearing Examiner Mark A. Rosenbaum conducted a hearing. Carrington examined witnesses and introduced exhibits. At the conclusion of the charging party's case, both respondents moved to dismiss. On October 1, 1987, the Hearing Examiner, in an oral decision, granted both motions and dismissed the Complaint in its entirety.

The Hearing Examiner first dismissed the allegations against the Board. He found that there was no evidence that the Board colluded with the Association to deprive Carrington of any monies under the contract. He determined that the Board's knowledge of the animosity between Carrington and Association President Glenn Johnson was not sufficient to establish a violation, especially

^{2/} This subsection prohibits public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act." The charging party originally alleged other subsection violations, but dropped those claims at the hearing.

since Carrington received the same differential as others with doctorates and received a salary increase equivalent to or in excess of that received by other unit members.

He also dismissed the allegations against the Association. He concluded that there was no evidence that the Association breached its duty of fair representation towards Carrington. He based this conclusion on the following: the Association has broad latitude in negotiations and has no obligation to negotiate identical benefits; the failure to increase the differential was consistent with the Board and Association's goal that those on the lower end of the salary guide would receive the bulk of the salary increases; no one with doctorates received increased differentials -- Carrington received what others similarly situated received; the Association had, in fact, proposed an increased differential; in previous years, the differential had occasionally not increased, and the Association had a legitimate interest in filing an unfair practice charge and objecting to a unilateral salary increase. With respect to Johnson's statements about "fucking" Carrington out of \$200, the Hearing Examiner said:

[T]hose words have to be looked at together with the entire package of what was presented, and if those statements and other statements were made, they simply were not reflected in the agreement that was reached to the point that rises to a violation of the duty of fair representation.

He also concluded that Johnson's statements in an Association newsletter did not violate the Act because he has a First Amendment right to make such statements.

On October 13, 1987, Carrington filed her request for review. She contends the Hearing Examiner erred in dismissing the Complaint alleging the Association violated its duty of fair representation because: (1) the Association agreed to salary guides which did not compensate employees consistent with the percentage salary increases agreed to in the memorandum of agreement; (2) the only differential which was not increased in this negotiation was that for the doctorate; (3) the fact that she received a substantial salary increase because she was at the middle of the guide is not relevant to the charge which alleges that no doctorates received a stipend increase because of Johnson's hostility towards Carrington; (4) there was evidence of hostility towards Carrington which establishes bad faith, and (5) the Association did not have a legitimate reason to refuse the Board's request to increase the doctorate differential. Carrington also objected to the Complaint's dismissal against the Board and the finding that Johnson's statements in an Association newsletter did not violate the Act.

On October 20 and 22, 1987, the Board and the Association responded, urging affirmance of the dismissal.

In New Jersey Turnpike Auth., P.E.R.C. No. 79-81, 5 NJPER 197 (1979), we set forth the standards in determining whether to grant a motion to dismiss:

[T]he Commission utilizes the standard set forth by the New Jersey Supreme Court in Dolson v. Anastasia, 55 N.J. 2 (1959). Therein the Court declared that when ruling on a motion for involuntary dismissal the trial court "is not concerned with the worth, nature or extent

(beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the party opposing the motion" (emphasis added). [Id. at 198]

The test is whether "the evidence, together with the legitimate inferences therefrom, could sustain a judgment in...favor" of the party opposing the motion, i.e., if, accepting as true all the evidence which supports the position of the party defending against the motion and affording him the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion must be denied. [55 N.J. at 5]

See also Essex Cty. Educational Services Comm'n, P.E.R.C. No. 86-78, 12 NJPER 13 (¶17004 1985).

Granting every favorable inference to the charging party, we accept these facts as true for purposes of this motion:

1. The Board and the Association entered into a memorandum of agreement on October 7, 1985 for a three year contract covering the years 1985-1986, 1986-1987 and 1987-1988. The agreement provided for salary increases of 8.3%, 8.3% and 8.7%.

2. The parties spent the next two weeks negotiating salary guides to implement this agreement. During the course of these discussions, the Association's chief negotiator, Don Kaplan, proposed that the doctoral differential (which had been \$1400 above that paid to the Masters + 30 scale) be increased by \$100 per year. The Board did not agree with this proposal, but left it for further discussions.

3. Board member George Spaltoff, a member of the Board's negotiations team, was quite concerned that the doctorate differential be increased. He met with Association president Glenn

Johnson prior to the Board's October 22, 1985 meeting. Johnson agreed to Spaltoff's request that there would be an increase in the doctorate differential. Johnson said Spaltoff "could do whatever he had to do to make it come into line so that we could recommend it to the Board." Based upon this representation, Spaltoff presented the Board, on October 24, 1985, with salary guides that included an increase in the doctorate differential of \$65 in the first year, \$65 in the second year and \$70 in the third year. This agreement was ratified by the Board that night. However, the Association, on October 22, had ratified an agreement that did not provide for an increase in the doctorate differential. In past years, there had been times when the differential had not been increased.

4. Mary Carrington is one of the 15 or 16 unit members with a doctorate. There is a history of animosity between Carrington and Johnson. Carrington had unsuccessfully attempted to expel Johnson from the NJEA and to limit his term of office as Association president. Sometime around October 24, 1985, Johnson told Spaltoff that he should tell Carrington that "he [Johnson] 'fucked' Carrington out of \$200." However, Carrington received a substantial salary increase from \$26,492 to \$35,775 and received a greater percentage increase than the collective settlement.

5. In December 1985, the Association filed an unfair practice charge against the Board. The charge alleged that the Board unilaterally increased the doctoral differentials and reneged on an agreement for increased retirement benefits.

6. In August 1986, the Board and the Association settled the unfair practice charge and other litigation. The Board agreed to reduce the doctorate differential to that which existed before the new contract and that there would be no increased differential for the duration of the three year contract, but that the \$65 increase paid by the Board did not have to be returned. The Association agreed to drop a pending private slander suit filed by Johnson against Spaltoff and a Commissioner of Education action which accused Board member Robert Carrington, the charging party's husband, of an unlawful conflict of interest when he participated in collective negotiations.

7. The Association, in its March newsletter, accurately reported that Carrington had filed these unfair practice charges. It also quoted Johnson that "he believes her reckless charges have gone too far," that her charges are lies, and that the Association would file a suit against her for malicious prosecution after the charges were dismissed.

We first consider whether the Association's conduct concerning the doctorate differential breached its duty of fair representation towards Carrington. A breach occurs when the union's conduct towards a member of the collective negotiations unit is arbitrary, discriminatory or in bad faith. E.g., City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98, 99 (¶13040 1982). There is evidence that this case simply involved the Association's decision not to pursue an increased differential for those with doctorates

and to file an unfair practice to rescind a differential which had been unilaterally granted. If this were all that were involved, we would agree that the Complaint should be dismissed. But there is also some evidence that the Association, because of Johnson's personal animosity towards Carrington, deprived her of monies that she otherwise would have received. In light of this evidence, in view of the motion to dismiss standard, we conclude that Carrington submitted sufficient evidence to survive the Association's motion to dismiss.

However, we do believe the Hearing Examiner properly dismissed the charge pertaining to statements Johnson made in the Association newsletter. Cf. Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981).

Finally, we believe the Complaint against the Board was properly dismissed. There is nothing to indicate it acted in bad faith in agreeing to the settlement.

ORDER

The matter is remanded to the Hearing Examiner for further proceedings consistent with this opinion.

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
January 21, 1988
ISSUED: January 22, 1988