

~~STATE OF NEW JERSEY~~
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MADISON TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-76-336-94

MADISON TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

On the basis of a stipulated record and positional statements received in an unfair practice proceeding, the Commission concludes that that Complaint issued in this matter must be dismissed in its entirety. The Association had claimed that the Board unilaterally imposed a salary increase for the substitute caller that was contrary to agreements previously reached by the parties during negotiations because that individual was a union member. The Association further asserted that the Board had refused to implement a negotiated salary increase for substitute teachers represented by the Association.

The Commission finds, after a careful review of the record, that there was no indication in the record that the Board had unilaterally imposed a five percent salary increase upon the substitute caller which was contrary to any negotiated agreement between the parties or which was otherwise violative of the Act. Furthermore, the Commission stated that the Association had failed to meet its burden of proof concerning one of the key elements to the Association's case relating to the issue of the salaries for substitute teachers, i.e., the existence of some agreement concerning pay increases for the substitutes.

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Appearances:

For the Respondent, Mr. Robert Stutts, Assistant
Superintendent

For the Charging Party, Mr. Glenn Johnson, Chairperson
of the Negotiating Committee

DECISION AND ORDER

An Unfair Practice Charge, Docket No. CO-76-336-94, was filed with the Public Employment Relations Commission (the "Commission") by the Madison Township Education Association (the "Association") on June 11, 1976 alleging that the Madison Township Board of Education (the "Board")^{1/} had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Association claims that the Board unilaterally imposed a salary increase for the substitute caller that was contrary to the agreements previously reached by the parties during negotiations because that individual was a union member and that the Board refused to implement a negotiated salary increase for substitute teachers represented by

1/ The Board is now known as the Old Bridge Board of Education.

the Association, thereby constituting violations of N.J.S.A.
34:13A-5.4(a)(1), (5) and (6).^{2/}

It appearing to the Director of Unfair Practice Proceedings that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 18, 1977.

A hearing was held on April 29, 1977, before Hearing Examiner Edmund G. Gerber, at which the parties submitted stipulations of facts material and relevant to the instant Unfair Practice Charge. No briefs were filed by the parties herein. However, pursuant to an agreement between the parties, an additional statement of facts, dated May 31, 1977, was submitted to the Hearing Examiner on June 1, 1977, by representatives of the Board. The statement indicates that the facts contained therein had been discussed with the Association's representative who both agreed with and stipulated to all the facts set forth in the statement.

The parties have waived the recommended report and decision of the Hearing Examiner and have agreed to submit the entire matter directly to the Commission for a decision.

After consideration of the entire record in this matter, including the Charge and Complaint, the transcript, and factual

^{2/} 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. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

stipulations, we find that the Board did not violate its duty to negotiate in good faith, nor did the Board fail to reduce a negotiated agreement to writing, nor did it interfere with, restrain or coerce employees in the exercise of rights guaranteed by the Act.

The Association asserted in its charge that the Board unilaterally imposed a 5% salary increase for the substitute caller (the record indicates that there is but one person employed in this capacity by the Board) after having negotiated increases of 7% and 9% for the years 1975-76 and 1976-77, respectively, with the Association. The Association further asserts that this action was taken by the Board because the substitute caller was a union member. The Association has also charged the Board with a failure to implement a negotiated and agreed-upon 50¢ per day salary increase for substitute teachers.

While acknowledging that the parties had discussed a proposal for an increase in salary for substitute teachers, the Board denies that it agreed to any proposal for an increase in substitutes' pay.

The record indicates that the parties commenced negotiations for the years 1976-77 and 1977-78 on October 1, 1975. On March 15, 1976, at a negotiations session attended by Assistant Superintendent Stutts, Board Secretary Lebrato, Board Attorney Murray, Association Negotiations Chairperson Johnson, and Association President Kaplan, Mr. Kaplan raised the issue of substitutes' salary. Mr. Stutts replied that the Board would not agree to any

pay increase for substitutes as they were at that time the highest paid substitute teachers in Middlesex County. Mr. Kaplan indicated that some increase should be given to the substitutes. After ascertaining that substitutes were then paid \$31.50 per day, Mr. Murray asked "What about rounding it off to the next dollar and make it 32?" Mr. Lebrato again stated that "...the Board would not buy that." Mr. Kaplan indicated that the proposal should be presented to the Board.

Thereafter, the parties caucused separately. When they returned to the table, there were further discussions and finally an agreement was reached concerning salaries and medical benefits for teachers, secretaries, and custodial and maintenance personnel. It is noted that in the discussions after the above-referenced caucus, there was no mention made of the substitute salary issue.

A memorandum of agreement was signed by the parties on the night of March 15, 1976. It reflects an agreement upon salary increases and certain fringe benefits for teachers, secretaries and custodial and maintenance personnel for the years 1976-77 and 1977-78. The memorandum says nothing about substitute teacher salaries.^{3/}

^{3/} The parties stipulated that there is also no mention of substitutes' salaries in the final printed agreement between the parties which resulted from the negotiations referred to herein. It is noted, however, that subsequent to the signing of the memorandum of agreement on March 15, 1976, it became apparent to the parties that there was disagreement between them concerning substitutes' salaries. Accordingly, when the final agreement was drafted, the parties agreed not to list substitutes' salaries therein, in view of the pendency of this case before the Commission.

Upon careful consideration of the entire record in this matter, the Commission finds that the Complaint should be dismissed.

There is no evidence in the record to support the Association's claim that the Board had agreed to 7% and 9% salary increases for the substitute caller for the years 1975-76 and 1976-77.^{4/} There is also no indication in the record that the Board had unilaterally imposed a 5% salary increase upon the substitute caller which was contrary to any negotiated agreement between the parties or which was otherwise violative of the Act.

Additionally, based upon the record, we do not agree with the Association's claim that the Board had agreed to give substitutes a 50¢ per day increase in pay. It is noted that the Board's position on this issue, stated more than once by its negotiating representatives, was that the Board was unwilling to offer any pay increases for substitutes. The memorandum of agreement signed by the parties setting forth the salary increases for other unit members contains no references whatever to substitutes. In the instant matter, the mere question posed by the Board's attorney about rounding off the salary for substitutes to the next dollar,

^{4/} We note that the charge alleges that the 7% and 9% increases for the substitute caller were negotiated for 1975-76 and 1976-77, respectively. However, both the stipulations in the transcript and the subsequent statement of facts submitted by the Board indicate that the negotiations herein were for an agreement for 1976-77 and 1977-78. Assuming that the Association intended to allege that the Board had negotiated 7% and 9% pay increases for the substitute caller for the years 1976-77 and 1977-78, we note that the record still fails to support such an allegation.

without more, is simply not enough to show agreement by the Board to the 50¢ per day increase. The Board's non-agreement to this increase is further strengthened by the Board Secretary's quick retort to the Board attorney's question that the Board simply would not agree to an increase in pay for substitutes. The fact that nothing further was said about the substitutes' pay issue after the parties returned from caucus cannot, under the circumstances herein, be construed to indicate agreement between the parties to a 50¢ per day increase.^{5/}

One of the key elements to the Association's case was the alleged existence of some agreement concerning pay increases for substitutes. The Association has failed to meet its burden of proof on this essential factual allegation. Furthermore, no evidence has been offered regarding the allegation that the Board unilaterally imposed a 5% salary increase on the substitute caller after having agreed to 7% and 9% increases for the two years or that a Board member stated that the Board's position regarding the substitute caller was based upon his union membership.^{6/}

The Commission, upon careful consideration of the entire record herein, finds and determines that the Association has failed

^{5/} Cf. In re East Brunswick Board of Education, P.E.R.C. No. 77-6, 2 NJPER 279, motion for reconsideration denied, P.E.R.C. No. 77-26, 3 NJPER 16, appeal pending, App. Div. Docket No. A-2366-75.

^{6/} N.J.S.A. 34:13A-5.4(c) states, in part, that all cases in which a complaint and notice of hearing on a charge is actually issued shall be prosecuted by the representative of the charging party. Section 19:14-6.8 of the Commission's Rules reiterates this requirement and also adds that the charging party "shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." N.J.A.C. 19:14-6.8.

to meet its burden of proving those allegations of the Complaint which were essential to a finding of a violation of the Act, and therefore the Complaint must be dismissed.

ORDER

The Complaint in the within matter is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst and Parcels voted for this decision.

Commissioners Hipp and Hurwitz abstained.

Commissioner Hartnett was not present.

DATED: Trenton, New Jersey

July 13, 1977

ISSUED: July 14, 1977