

P.E.R.C. NO. 87-97

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ENGLEWOOD CLIFFS BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-274-25

ENGLEWOOD CLIFFS EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a complaint based on an unfair practice charge filed by the Englewood Cliffs Education Association. The charge alleged the Englewood Cliffs Board of Education violated the New Jersey Employer-Employee Relations Act when it refused to negotiate new salary guides after passage of the Teacher Quality Employment Act. The Chairman, in agreement with a Hearing Examiner and in the absence of exceptions, finds that the Board did not violate the Act.

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Appearances:

For the Respondent, Fogarty & Hara, Esqs.
(Stephen Fogarty, of counsel)

For the Charging Party, Bucceri & Pincus, Esqs.
(Louis Bucceri, of counsel)

DECISION AND ORDER

On March 26, 1986, the Englewood Cliffs Education Association ("Association") filed an unfair practice charge against the Englewood Cliffs Board of Education ("Board"). The charge alleges the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/} when it refused to negotiate new salary

^{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; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and

guides after passage of the Teacher Quality Employment Act, N.J.S.A. 18A:29-5 et seq ("TQEA").

On August 26, 1986, a Complaint and Notice of Hearing issued. On September 16, the parties submitted joint stipulations of fact which were amended on October 16.

On September 29, 1986, the Board filed an Answer denying it committed an unfair practice. Both parties filed briefs and replies.

On November 24, 1986, Hearing Examiner Mark A. Rosenbaum recommended the Complaint be dismissed. H.E. No. 87-36, 12 NJPER ____ (¶ ____ 1986) (copy attached). He found that the parties were bound by their agreements regarding part-time teachers and teacher aides and that therefore, the Board had no duty to negotiate concerning those employees after the passage of the TQEA. He also found that the TQEA did not require the Board to renegotiate the 1986-87 salary guide.

The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before December 8, 1986. Neither party filed exceptions or requested an extension.

I have reviewed the record. I adopt and incorporate the stipulations of fact (pp. 3-4 of H.E. report). Acting pursuant to authority delegated to me by the full Commission in the absence of

1/ Footnote Continued From Previous Page

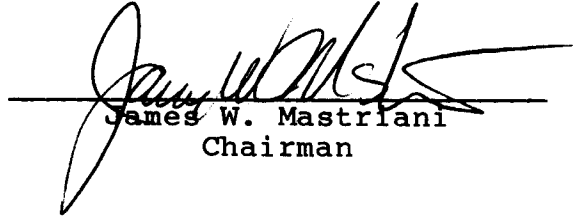
conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

exceptions, I agree with the Hearing Examiner that the Complaint should be dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
ISSUED: January 30, 1987

H.E. NO. 87-36

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

In the Matter of

ENGLEWOOD CLIFFS BOARD OF
EDUCATION,

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-and-

Docket No. CO-86-274-25

ENGLEWOOD CLIFFS EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss unfair practice allegations filed by the Englewood Cliffs Education Association. The Hearing Examiner finds that the Teachers Quality Employment Act does not require the reopening of the parties' collective agreement, with respect to the salaries of full time teachers, part time teachers and teacher aides, for academic years 1985-86 and 1986-87.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 87-36

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Appearances:

For the Respondent
Fogarty & Hara, Esqs.
(Stephen Fogarty, Esq.)

For the Charging Party, Bucceri & Pincus, Esqs.
(Louis Bucceri, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On March 26, 1986, the Englewood Cliffs Education Association ("Association") filed an Unfair Practice Charge against the Englewood Cliffs Board of Education ("Board" or "Respondent") alleging violations of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq. ("Act"). Specifically, the Association alleged that the Board refused to negotiate the creation of new district salary guides subsequent to the passage of the Teacher Quality Employment Act, N.J.S.A. 18A:29-5 et seq. ("TQEA")

in violation of sections 5.4(a)(1) and (5) of our Act.^{1/} A Complaint and Notice of Hearing was issued on August 26, 1986. The parties submitted joint stipulations of facts on September 18, 1986, which were amended by agreement of the parties on October 16, 1986. The Respondent filed an Answer on September 29, 1986, denying that it had committed any unfair practices and requesting the dismissal of the Complaint. Both parties have submitted briefs^{2/} and responsive letter memoranda, the last of which was received on November 3, 1986. The parties have not waived a Hearing Examiner's Recommended Report and Decision.

The Englewood Cliffs Board of Education, a public employer within the meaning of the Act, and the Englewood Cliffs Education Association, an employee representative within the meaning of the Act, have agreed to the following:

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- 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; and (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/ In its brief the Respondent also asserts that the Charge is untimely regarding the alleged responsibility of the Board to negotiate over the impact of the TQEA on the salaries of part-time teachers and teacher aides. This claim is without merit. The Charge, filed within six months of the Board's refusal to negotiate (Exhibit J-2), references the Association's intent to negotiate over TQEA effects on "both individuals covered by the statutory amendments and those not specifically covered thereby" (Charge at paragraph 3).

STIPULATIONS OF FACT:

1. Article 10(c) of the 1984-87 Collective Bargaining Agreement between the parties establishes the method for computing the salary to be paid to teacher aides.

2. For 1985-86 teacher aides have been paid based upon the teacher salary guide for 1985-86 as it existed prior to the adoption of the minimum salary law amendments of September, 1985. (N.J.S.A. 18A:29-1 et seq.) This salary guide is attached as Schedule "B" of the Collective Agreement.^{3/}

3. Pursuant to established practice in the district, part-time teachers are paid pro-rata on the salary guide for full-time teachers.

4. For 1985-86 part-time teachers have been paid based upon the teacher salary guide for 1985-86 as it existed prior to the adoption of the minimum salary law amendments of September, 1985. (N.J.S.A 18A:29-1 et seq.) This salary guide is attached as Schedule "B" of the Collective Agreement.

5. By letter of October 30, 1985 the charging party requested negotiations regarding implementation of the September, 1985 minimum salary law amendments. J-1

^{3/} All exhibits referenced by the parties in their stipulations are part of the record, but are not attached to this decision. All exhibits are accurately described by the parties in their stipulations.

6. By memorandum of November 14, 1985 respondent's Business Administrator/Board Secretary replied to the Association's letter of October 30, 1985. J-2

7. The 1984-87 Collective Agreement between the parties is attached as Exhibit J-3.

8. The unfair practice charge filed in this matter on March 26, 1986 is attached as Exhibit J-4.

9. No negotiations between the parties have occurred regarding the implementation of the minimum salary law amendments as to either the 1985-86 or 1986-87 school years.

10. The negotiations between the parties which are to commence in October, 1986 will relate to a successor to the current Collective Agreement.

ANALYSIS

This dispute covers the application of the Teacher Quality Employment Act to the collective agreement in place between the parties. The TQEA, codified in N.J.S.A. 18A:29-5, provides that "the minimum salary of a full-time teaching staff member...shall be \$18,500...." The legislation also provides that "[n]othing in this act shall be construed to require the opening of any signed contract in effect for the 1985-86 school year" L. 1985, c. 321, §12.

The Commission has recently issued several decisions in this area. In Lyndhurst Bd. of Ed., P.E.R.C. No. 87-32, 12 NJPER ____ (¶____ 1986), the Commission found that under the TQEA, a local board of education is required to raise full-time teacher

salaries below \$18,500 to that level. While negotiations with the majority representative would normally be required to change salaries in a collective agreement, the Commission found that the TQEA preempted negotiations over salaries of full-time teachers earning less than \$18,500. Similarly, the Commission found that the board was not required to renegotiate its existing salary guide due to the express language in the statute concerning "signed contracts" cited above. See also Westwood Bd. of Ed., P.E.R.C. No. 87-30, 12 NJPER ____ (¶____ 1986), Branchburg Bd. of Ed., P.E.R.C. No. 87-15, 12 NJPER ____ (¶____ 1986), North Arlington Bd. of Ed., P.E.R.C. No. 87-30, 12 NJPER ____ (¶____ 1986), Perth Amboy Bd. of Ed., P.E.R.C. No. 87-29, 12 NJPER ____ (¶____ 1986) and Winfield Twp. Bd. of Ed., P.E.R.C. No. 87-52, 12 NJPER ____ (¶____ 1986).

The Association argues that the TQEA has effectively eliminated the old guide and that the impact and implementation of the TQEA requires negotiation^{4/} over the creation of a new guide. Thus, the Association alleges that the Board has violated the Act by unilaterally establishing the new guide. However, I agree with the Board that this argument must fail here for the same reasons stated by the Commission in Lyndhurst and Westwood, since the new guide

^{4/} The Association does not seek implementation, by contractual entitlement, of its existing differentials, but rather the negotiation of a new guide. Compare Branchburg Bd. of Ed. and Perth Amboy Bd. of Ed., in which the Commission declined to exercise unfair practice jurisdiction over the contractual entitlement argument.

changes only the salaries of teachers who were earning less than \$18,500, the Board has, in creating the new guide, done nothing more than comply with the TQEA. There is no allegation that other terms and conditions of employment for full-time teachers have been unilaterally changed.

The Association also argues that the impact and implementation of the TQEA has effected part-time teachers and full-time teacher aides and that negotiations upon demand are mandatory. In Lyndhurst, the Commission reserved on the question of whether the TQEA requires renegotiations over the salaries of employees other than full-time teaching staff. The Commission did not rule on the question because the record did not indicate whether or not such part-time employees were actually employed by district.

By contrast, this record squarely presents "part-time teachers who are paid pro rata on the salary guide for full-time teachers" (Stipulation of Fact No. 3). Similarly, the contract provides for payment of teacher aides based upon a percentage of the teachers salary guide (Stipulation of Fact No. 1). Both the part-time teachers and the teacher aides are paid based on the teachers salary guide for 1985-86, "as it existed prior to the adoption of the minimum salary law amendments of September 1985." (Stipulation of Fact Nos. 2 and 4). Thus, the facts present two salary guides used by the Board for the computation of salaries for unit employees: the new salary guide, which includes the \$18,500 minimum under which full-time teachers are paid, and the old salary

guide, under which the salaries of part-time teachers and teacher aides are computed.

While this two guide system was not contemplated by the parties in their current collective agreement, the system appears to be consistent with legislative intent. The TQEA expressly applied only to full-time teachers employed by local boards of education and offers no additional assistance to any other employee group. The statute has already been strictly construed; indeed, full-time teachers employed by educational services commissions were not expressly covered by the TQEA, and were the subject of subsequent legislation increasing their minimum salaries. L. 1986, c. 9 (codified at N.J.S.A. 18A:29-5 et seq.^{5/} Thus, by passing the TQEA, the Legislature only intended to affect the minimum salaries of full-time teachers employed by the local boards of education, and did not create any negotiations obligation or minimum salaries for part-time teachers or teacher aides.^{6/}

^{5/} On March 3, Senate Bill No. 1853 was introduced, seeking to extend the TQEA to "any full-time public employee who is required to have a teaching certificate to meet the condition of his employment...." This bill, still being considered in the Senate Committee on Education at the time of this decision (N.J. Legislative Index, 11/17/86), confirms the strict legislative construction of the TQEA. In view of the substantial State role in funding the TQEA programs, it is not surprising that each affected group must be expressly included in the statute.

^{6/} While rules promulgated by the Department of Education pursuant to the TQEA (N.J.A.C. 6:20-5.6(d)) reference full-time teachers who may only work a portion of the academic year, these references are clearly limited to teachers who were full-time teachers in the district during that year.

In view of the above, and since the parties previously reached an agreement concerning part-time teachers and teacher aides, I find that they are bound by the terms of that agreement in the absence of a preemptive legislative directive. The TQEA does not preempt their agreement as to part-time teachers and teacher aides. Accordingly, the Board did not commit an unfair practice when it refused to negotiate with the Association concerning teacher aides and part-time teachers after the passage of the TQEA and during the span of its current collective agreement with the Association.

The Association also argues that since its current agreement also covers the academic year 1986-87, the Board must negotiate with respect to the implementation of the TQEA salary guide, affecting full-time teachers, part-time teachers and teacher aides for that academic year. This is a question upon which the Commission has expressly reserved ruling. Winfield Park Twp. Bd. of Ed., supra.

This case squarely presents the question and the parties have thoroughly briefed the issue. The Association argues that the clear impact of the TQEA on the negotiated salary guide for 1986-87 (Schedule C of the parties' Agreement) is to raise the salaries of teachers on steps 1 through 4 of the non-tenured BA section of the guide and step 1 of the non-tenured BA+30 section of the guide. While such changes are non-negotiable, (since they too are required by statute), the Association argues that the remainder of the guide

is not directly affected by the TQEA. That is, the statute neither precludes nor requires upgrading of those other steps on the guide which are above \$18,500. However, it is clear that differentials which existed between steps in the early stages of the guide have been eliminated, and the Association seeks to negotiate^{7/} over the maintenance of these differentials in 1986-87.

The Commission considered and rejected this argument in Westwood and Lyndhurst, supra. Relying on the legislative directive that "[n]othing in this Act shall be construed to require the reopening of any signed contract in effect for the 1985-86 school year...", the Commission concluded that "[t]hus, the Board is not required to renegotiate existing salary guides." However, the Commission's ruling was not expressly limited to the 1985-86 school year nor did it address at all the issue of salary guides in subsequent school years included in an agreement in effect for the 1985-86 school year. See also Winfield Twp. Bd. of Ed., where the Commission again limited its ruling to the 1985-86 school year.

Thus, the Association's argument for 1986-87 is the same as it makes for 1985-86, with the addition of its reliance on the legislative directive that "[n]othing in this Act shall be construed to require the reopening of any signed contracts in effect for the 1985-86 school year." The Association maintains that even if the clause precludes reopening of the salary guide in 1985-86, it does

^{7/} See footnote 4, supra.

not preclude reopening the 1986-87 guide in its current three-year agreement (Exhibit J-2).

At first glance this clause appears susceptible to the interpretation offered by the Association: that is, that the language provides an exception for the 1985-86 school year but does not speak in the imperative as to the reopening of an agreement which also covers the subsequent year 1986-87 (or for that matter other subsequent years). However, the legislative language is ambiguous; it could also be interpreted to mean that "any signed contract in effect for the 1985-86 school year" cannot be reopened irrespective of the years which the signed contract ("in effect for the 1985-86 school year") covers in addition to 1985-86.

The legislative history of this clause and related issues clarifies the matter. The original bill was passed by both houses of the State Legislature, forwarded to the Governor and vetoed by Governor Kean with extensive recommendations for revisions (Governor's reconsideration and recommendation statement Assembly No. 634, 8/28/85). The bill as originally presented to the Governor for signature did not contain the above-cited language concerning "any signed contract in effect for the 1985-86 school year...;" instead, that exact language was recommended by the Governor at page 4 of his veto message. In the same message, the Governor recommended the deletion of language in the original bill which addressed the topic. The original bill at section 6 provided:

Teachers receiving more than the minimum salary set forth in this amendatory and supplementary act shall

not receive automatic salary increases pursuant to any existing collective negotiations agreement with a salary guide indexed to compute salaries on the basis of a ratio established between the minimum salary and all other ranges, increments, or increases. Any salary guide in effect on the effective date of this amendatory and supplementary act which is based on such an index shall be renegotiated.

The Governor's message requested the deletion of the second sentence of this section. The statute as enacted reads precisely as the Governor requested. (See N.J.S.A. 18A:29-5.5).

Thus, the original bill included the requirement of renegotiation of contracts with salary guides indexed in a manner similar to the agreement in question in this case.^{8/} The deletion of that provision, taken together with the language added by the Governor's message (i.e. that "[n]othing in this Act shall require the reopening of any signed contract in effect for the 1985-86 school year...") indicates a clear legislative intent: there should be no renegotiation of collective agreements which were in effect when the statute was passed (i.e. 1985-86 school year). This legislative intent is consistent with the Governor's veto message: "I am also deleting the escalator clause of this legislation as I feel the State should avoid a permanent intrusion into the collective bargaining process between local school districts and their employees." Although this provision was aimed at the clause

^{8/} While the salary guides in the parties' agreement do not operate on a pure index system, they do have built in differentials with similar results.

in the original bill which would have tied future teacher increases to such indicators as the consumer price index (see original bill at section 7), the sentiments are consistent with the legislative intent: the bill was intended to intrude on the collective bargaining processes as minimally as possible. In view of the above I conclude that the TQEA does not require the Board to renegotiate the 1986-87 salary guide.

Accordingly, I recommend that the Commission ORDER that the Complaint be dismissed in its entirety.



Mark A. Rosenbaum
Hearing Examiner

Dated: November 24, 1986
Trenton, New Jersey