

P.E.R.C. NO. 82-107

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BRUNSWICK TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-180-102

NORTH BRUNSWICK TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts a recommendation of a Hearing Examiner and denies the North Brunswick Township Education Association's Motion for an Order Setting Aside a Stipulation of Settlement. It appears that the North Brunswick Township Board of Education complied with the express written terms of the settlement stipulation in which the Association agreed to the dismissal with prejudice of its unfair practice charge.

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Charging Party.

Appearances:

For the Respondent, Borrus, Goldin & Foley, Esqs.
(Anthony B. Vignuolo, of Counsel)

For the Charging Party, Klausner & Hunter, Esqs.
(Stephen E. Klausner, of Counsel)

DECISION AND ORDER

On December 12, 1980, the North Brunswick Township Education Association (the "Association") filed an unfair practice charge with the Public Employment Relations Commission against the North Brunswick Township Board of Education (the "Board"). The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1) and (5) ^{1/} when, after reducing the staff in the Media Resource Center of the high school by one 20 hour employee, it unilaterally increased the work load of a clerk-typist and refused to negotiate over her compensation.

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

(Continued)

On February 18, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On April 13, 1981, Commission Hearing Examiner Alan R. Howe conducted a hearing and permitted the parties to examine witnesses, present evidence and argue orally.

Before the parties were to file post-hearing briefs, they settled the case. On June 22, 1981, the parties executed a Stipulation of Settlement. The Stipulation provided:

1. The parties shall, in good faith, conduct one (1) negotiations session concerning the alleged increase in work load and responsibilities of the Clerk-Typist for the school year 1980-1981 employed by the Media Resource Center at North Brunswick Township High School. The negotiations shall be held at a time and place to be mutually agreed upon by the parties within fifteen days of the date hereof. In the event the parties cannot reach an agreement, then negotiations shall terminate without further proceedings, with the express understanding that this issue may be negotiated as part of any successor Collective Bargaining Agreement.
2. The within matter, having been amicably adjusted by and between the Board of Education and the North Brunswick Township Education Association, is hereby withdrawn and dismissed with prejudice and without costs. (Emphasis supplied)

Upon receipt of the Stipulation of Settlement for filing, the Director closed the case on July 2, 1981.

On December 22, 1981, the Association filed a Motion for An Order Setting Aside the Stipulation of Settlement. The accompanying Certification asserted that the parties had intentionally omitted from their stipulations the key aspect of the

1/ (Continued) concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

settlement: an upgrading of the employee's position to be funded out of the entire economic package for the 1981-1982 collective agreement. The Certification further alleged that the Board had not upgraded the position.

The Board filed a reply Certification in which it denied any collateral or oral agreements beyond those incorporated in the written stipulation. The Board instead only agreed to negotiate over a proposed upgrading as part of the negotiations for a successor collective agreement; it did so. The parties executed a collective agreement for 1981-1982 which did not upgrade the clerk-typist position.

On February 16, 1982, the Director of Unfair Practices referred the motion to Hearing Examiner Alan R. Howe for determination. On February 23, 1982, the Hearing Examiner conducted a telephone conference with counsel for the parties and heard their oral arguments.

On March 5, 1982, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-39, 8 NJPER ____ (¶ ____ 1981) (copy attached). He recommended that the Commission deny the Association's motion. He specifically found that the Stipulation of Settlement insulated the Board against resurrection of the unfair practice proceedings.

On March 17, 1982, the Association filed Exceptions. The Exceptions asserted that: (1) during the February 23, 1982 conference, the Board's attorney stated that during the settlement negotiations preceding the stipulation, he had said that an upgrade for the clerk-typist position would be funded out of the economic package for the new collective agreement provided the

upgrading did not cost the Board anything; (2) there was no meeting of the minds; and (3) the Hearing Examiner misinterpreted the Stipulation of Settlement. On March 25, 1982, the Board filed a response reiterating the positions set forth in its reply Certification.

We have reviewed the Hearing Examiner's report and the parties' submissions. We agree that the Association's motion must be denied.

The Public Employment Relations Commission is charged, inter alia, with responsibility for "the prevention or prompt settlement of labor disputes...." N.J.S.A. 34:13A-2. Consistent with these responsibilities, the Commission strongly advocates a voluntary resolution of labor disputes. Accordingly, when the parties reach a settlement and withdraw an unfair practice charge with prejudice based upon such settlement, the Commission will only reopen such a matter in the most compelling circumstances. For example, in Borough of East Rutherford, P.E.R.C. No. 82-51, 7 NJPER 680 (¶12307 1981), the Commission noted that a settlement agreement is null and void where it conflicts with the State law or regulations. This policy is consistent with the decisions of the Appellate Division in New Jersey. See, e.g., Honeywell v. Bubb, 130 N.J. Super. 130, 136 (1974):

...barring fraud or other compelling circumstances, our courts strongly favor the policy that the settlement of litigation be attained and agreements thereby reached, be honored....

See also In re Borough of Hawthorne, P.E.R.C. No. 82-37, 7 NJPER 602 (¶12268 1981).

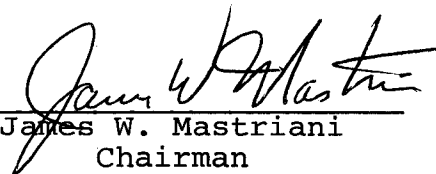
In the instant matter, the Stipulation of Settlement stated that the parties would negotiate over the alleged increase in work load and responsibilities for the clerk-typist position for the 1980-1981 school year. The stipulation, however, did not require the parties to reach agreement or to upgrade the position. If negotiations proved unsuccessful, then the parties could negotiate this issue as part of any successor collective agreement. Again, however, the stipulation did not require an agreement or an upgrading, only negotiations. It is undisputed that the Board, consistent with its explicit obligations, did negotiate over this issue, and there is no contention that such negotiations were in bad faith. Thus, on this record, it is clear that the Board complied with the terms of the Stipulation of Settlement.

It is also clear that the parties explicitly agreed to have the matter dismissed with prejudice and to substitute negotiations for litigation. The Association placed no conditions on this dismissal.

Further, the settlement does not violate any State law, regulation, or public policy. The Association argues only that it struck a better deal orally than it did in writing. In effect, it argues that if it could not obtain an upgrading through negotiations pursuant to the express terms of the stipulation, it had a right to obtain the upgrading through the alleged oral agreement of the parties. The Board, however, denies any oral agreements outside the stipulation. We agree with the Hearing Examiner that the express terms of the stipulation control and that the Association cannot vary these express terms through evidence of alleged prior or contemporaneous oral agreements.

Under all the circumstances, the Commission finds no compelling reasons to disturb the settlement entered into by the parties. Accordingly, the Motion for An Order Setting Aside the Stipulation of Settlement is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett and Suskin voted for this decision. Commissioners Hipp and Graves abstained. None opposed. Commissioner Newbaker was not present.

DATED: Trenton, New Jersey
May 4, 1982
ISSUED: May 5, 1982

STATE OF NEW JERSEY
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-and-

Docket No. CO-81-180-102

NORTH BRUNSWICK TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission deny the Motion by the Charging Party for an order setting aside the stipulation of settlement, dated June 22, 1981, wherein the Charging Party and the Respondent by their attorneys agreed to settle the underlying unfair practice charge wherein the charge was to be withdrawn with prejudice. The Stipulation of Settlement contemplated that there would be one negotiation session conducted in good faith regarding the up-grading of a clerk-typist and if agreement was not reached then negotiations would terminate "without further proceedings." The negotiation session took place and no agreement was reached. The Hearing Examiner rejected the argument of counsel for the Charging Party that the matter be reopened, citing as precedent decisions of the Commission and the Appellate Division.

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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Appearances:

For the North Brunswick Township Board of Education
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(Anthony B. Vignuolo, Esq.)

For the North Brunswick Township Education Association
Klausner & Hunter, Esqs.
(Stephen E. Klausner, Esq.)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION
ON MOTION TO SET ASIDE STIPULATION OF SETTLEMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 12, 1980 by the North Brunswick Township Education Association (hereinafter the "Charging Party" or the "Association") alleging that the North Brunswick Township Board of Education (hereinafter the "Respondent" or the "Board") 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. (hereinafter the "Act"), in that since September 1980 the Respondent has reduced the staffing in the Material Resource Center of the High School by one 20-hour employee and has thereby increased the workload of Marge DeFrank and that the Respondent has refused to negotiate additional compensation for DeFrank, all of which was alleged to be a violation

of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 18, 1981. Pursuant to the Complaint and Notice of Hearing a hearing was held on April 13, 1981 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. Prior to the filing of post-hearing briefs on May 13, 1981 the instant matter was the subject of settlement discussions. A Stipulation of Settlement was executed on June 22, 1981 by counsel for the parties.

Following the execution of the Stipulation of Settlement, supra, a withdrawal with prejudice was filed by the Charging Party with the Director of Unfair Practices. The withdrawal was acknowledged by the Director of Unfair Practices on July 2, 1981 and the case was closed.

The foregoing Stipulation of Settlement provided as follows:

"The parties shall, in good faith, conduct one (1) negotiation session concerning the alleged increase in workload and responsibilities of the clerk-typist for the school year 1980-1981 employed by the Media Resource Center at the North Brunswick Township High School. The negotiations shall be held at a time and place to be mutually agreed upon by the parties within 15 days of the date hereof. In the event the parties can not reach an agreement, then negotiations shall terminate without further proceedings, with the express understanding that this issue may be negotiated as part of any successor Collective Bargaining Agreement." (Emphasis supplied).

On December 22, 1981 counsel for the Charging Party filed a Motion for an Order Setting Aside the Stipulation of Settlement and Certification, which stated, in pertinent part, as follows:

1/ These Subsections prohibit public employers, their representatives or agents from:

"(1) Interfering with, restraining or coercing employees in the exercise of 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."

H. E. 82-39

"...It is the position of the Association that the primary operative fact leading to the Association's settlement of the matter, to wit; an up-grading to be funded out of the entire economic package for the 1981-1982 collective bargaining agreement for one of the Association's members, was, by agreement, intentionally not embodied in the writing.

"Apparently, the critical operative event was either not communicated to the Board of Education, misunderstood by the counsel for the Board of Education, or was repudiated by the Board of Education at a later date, but in any event, no upgrading occurred."

On December 28, 1981 counsel for the Respondent filed a reply Certification, referring to the instant Stipulation of Settlement and several others, which stated, in pertinent part, as follows:

"...There were no collateral or oral agreements beyond those incorporated into the written stipulations of settlement. The Association alleges that the 'primary operative fact' leading to the Association's settlement of these cases was an upgrading to be funded out of the economic package for the Association's 1981-1982 Collective Bargaining Agreement. There never was any such agreement reached nor is any such agreement reflected in any of the written documents. The North Brunswick Township Board of Education agreed to permit the upgrading of a clerk-typist position to be added to the pending negotiations for a successor Collective Bargaining Agreement. This was done. A subsequent Collective Bargaining Agreement for the school years 1981-1982 was negotiated and executed by the parties without an upgrading of the clerk-typist position in the media resource room at the North Brunswick Township High School. The execution of this agreement bars any attempt, at this point, to renegotiate that issue."

On February 16, 1982 the Director of Unfair Practices referred the matter to the instant Hearing Examiner for determination. On February 23, 1982 the Hearing Examiner conducted a telephone conference with counsel for the parties and heard their oral arguments on the papers heretofore filed, supra.

For the reasons hereinafter set forth, the Charging Party's Motion to Set Aside Stipulation of Settlement is denied.

DISCUSSION AND ANALYSIS

The Commission is charged, inter alia, with the responsibility for "...the prevention or prompt settlement of labor disputes..." N.J.S.A. 34:13A-2. As the Commission said in Borough of East Rutherford, P.E.R.C. No. 82-51, 7 NJPER 680 (1981): "...Consistent with these responsibilities (of settling labor disputes), the Commission strongly advocates the voluntary resolution of labor disputes.

Moreover, the Commission recognizes that the unfair practice forum before this agency may often give much needed meaning to voluntary settlement agreements..."

(7 NJPER at 681). The Hearing Examiner also has looked to several Appellate Division decisions regarding settlement stipulations or agreements. For example, in Carlsen v. Carlsen, 49 N.J. Super. 130 (App. Div. 1958), the court said:

"Since stipulations in court made by attorneys when acting within the scope of their authority are enforceable against their clients certainly, stipulations by attorneys and their clients before the court and in the record must, a fortiori be enforceable.." (49 N.J. Super. at 137).

The Appellate Division in Honeywell v. Bubb, 130 N.J. Super. 130 (1974) said:

"Embedded in our jurisprudence is the principle that the settlement of litigation ranks high in our public policy (citing cases)..." (130 N.J. Super. at 135).

The Appellate Division in Honeywell v. Bubb, supra, also said:

"...barring fraud or other compelling circumstances, our courts strongly favor the policy that the settlement of litigation be attained and agreements thereby reached, be honored..." (130 N.J. Super. at 136).

The Commission also had occasion to cite Honeywell v. Bubb, supra, in its decision in Borough of Hawthorne, P.E.R.C. No. 82-37, 7 NJPER 602 (1981).

From all of the foregoing it is apparent that there is a well settled policy in New Jersey, as well as in other jurisdictions, that settlements reached by counsel "...when acting within the scope of their authority..." are enforceable against their clients. The Hearing Examiner is persuaded that when counsel for the Charging Party herein entered into settlement discussions which culminated in the Stipulation of Settlement of June 22, 1981 the settlement was binding upon the Charging Party.

In examining the terms of the Stipulation of Settlement, quoted above, it is clear that the Respondent committed itself to negotiate "in good faith" at one negotiations session concerning the alleged increase in workload of the clerk-typist employed by the Media Resource Center for the 1980-81 school year. Thereafter the settlement provided that in the event that an agreement was not reached "...then negotiations shall terminate without further proceedings..."

No interpretation can be placed upon the phrase "without further proceedings" except that the Charging Party agreed that the Respondent was insulated against any attempted resurrection of the instant unfair practice proceedings.

The Hearing Examiner has, in so deciding, considered fully the oral argument of the parties by their counsel on February 23, 1982. Notwithstanding the contention of the Charging Party that the "critical operative event" was not and could not be embodied in the Stipulation of Settlement, the Hearing Examiner has no recourse but to deny the Charging Party's Motion for an Order Setting Aside the Stipulation of Settlement, based upon the above decisions of the Commission and the Appellate Division.

* * * *

For all of the foregoing reasons, the Hearing Examiner makes the following Recommended Order:

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Charging Party's Motion for an Order Setting Aside Stipulation of Settlement be denied.



Alan R. Howe
Hearing Examiner

Dated: March 5, 1982
Trenton, New Jersey