

P.E.R.C. NO. 81-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DELAWARE VALLEY REGIONAL
BOARD OF EDUCATION,

Charging Party,

-and-

Docket No. CE-80-18-98

DELAWARE VALLEY REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In an unfair practice proceeding, the Commission affirms a Hearing Examiner's decision that the Delaware Valley Regional Education Association violated N.J.S.A. 34:13A-5.4 when the Association submitted a proposed salary guide for the second year of their contract, 1980-81, which exceeded the total cost for such guide as set forth in the negotiated agreement and further refused to resubmit a new proposed guide which complied with the terms of the contract, after the Board pointed out the alleged error.

Also the Commission adopts the Hearing Examiner's recommendation that the charge alleging a violation of N.J.S.A. 34:13A-5.4(b)(1) be dismissed because no document or other evidence had been offered by the Board to support the charge.

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DELAWARE VALLEY REGIONAL
EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Respondent, John A. Thornton, NJEA UniServ
Representative

For the Charging Party, Cassetta, Brandon Associates
(Raymond Cassetta, Consultant)

DECISION ORDER ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on February 13, 1980 by the Delaware Valley Regional Board of Education (the "Board" or the "Charging Party") alleging that the Delaware Valley Regional Education Association (the "Association" or the "Respondent") 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"). Specifically, the Board alleges that the Association has violated N.J.S.A. 34:13A-5.4(b)(1) and (4)^{1/} by submitting a proposed salary guide for the second year of their

1/ These subsections prohibit an employee organization, 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 (4) refusing to reduce a negotiated agreement to writing and to sign such agreement."

contract, 1980-81, which exceeds the total cost for such guide as set forth in the negotiated agreement, and has further refused to resubmit a new proposed guide when the Board pointed out the alleged error.

It appearing that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 30, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held in Trenton, New Jersey, on June 5, 1980, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties submitted post-hearing briefs and the record was closed on July 28, 1980. On October 10, 1980, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-14, 6 NJPER _____ (¶ _____ 1980). A copy of this Report is attached hereto and made a part hereof. Neither party filed exceptions to the Report.^{2/} This matter is now properly before the Commission for decision pursuant to N.J.A.C. 19:14-8.1.

The Hearing Examiner, in his Recommended Report and Decision, found that the parties had entered into a two year agreement covering the 1979-80 and 1980-81 school years which set forth the method for computing the negotiated raises for the

^{2/} Pursuant to N.J.A.C. 19:14-7.3(a), exceptions, if any, would have been due on or about October 23, 1980. None have been received nor have extensions of time been requested. N.J.A.C. 19:14-7.3(b) provides in pertinent part, "Any exception which is not specifically urged shall be deemed to have been waived."

teaching staff as agreed upon percentage increases in the total dollar cost to the Board. The money was to be distributed in a mutually agreeable fashion based upon proposed guides prepared by the Association. The Hearing Examiner found, in agreement with the Board's position, that the total cost of the guide submitted by the Association for the 1980-81 school year exceeded by \$16,000.00 the figure arrived at pursuant to the method set forth in the agreement. He concluded that the Association's refusal to prepare a new guide which complied with guidelines in the contract constituted a refusal to reduce a negotiated agreement to writing.

The Association had maintained that its proposed 1980-81 guide was prepared in the same way as the guide it had submitted for 1979-80, which had been accepted by the Board.^{3/} Since the total cost of that guide exceeded the total cost figure for 1979-80 computed pursuant to the agreement by \$2,000.00, the Association maintained that the Board was bound by prior practice to absorb the \$16,000.00 overage just as it had absorbed the amount in 1979-80. It could not now rely upon the express terms of the agreement just because the excess amount for 1980-81 was significantly larger.

The Hearing Examiner found that the contract clearly and unambiguously provided for increases in terms of a stated

^{3/} The Association maintained that this was also the same method used to prepare guides under prior agreements. But the Board argued that this was the first agreement in which the negotiated raise was set forth as a percentage increase of the Board's total cost for the prior year rather than a percentage increase of each teacher's salary.

percentage increase over the total cost to the Board from the prior year. This resulted in a figure consistent with the Board's position, not the Association's. Applying accepted principles of evidence and labor law, he concluded that the existence of prior practice could not be considered to contradict or alter the clear terms of a written agreement. He therefore found that the Association's conduct was in violation of N.J.S.A. 34:13A-5.4(b)(4) of the Act and recommended that the Respondent Association cease and desist from such action and affirmatively submit a salary schedule to the Board in compliance with the express terms of the agreement.

He further found that no evidence had been offered by the Board to demonstrate that the Association violated section 5.4(b)(1) of the Act and therefore recommended that the Commission dismiss that portion of the Complaint.

Upon review of the entire record in this matter, and in the absence of exceptions to the Recommended Report and Decision, we adopt the Hearing Examiner's findings of fact and conclusions of law for the reasons cited by the Hearing Examiner. We have modified the proposed order slightly to make it clear that it applies only to the 1980-81 school year, and to provide for the posting of a Notice to Employees.

ORDER

IT IS HEREBY ORDERED that Respondent, its officers, agents, successors or assignees shall:

A. Cease and desist from refusing to reduce a negotiated agreement to writing by refusing to submit or agree to

salary guides for the 1980-81 school year which comply with the expressed terms of the agreement.

B. Take the following affirmative action:

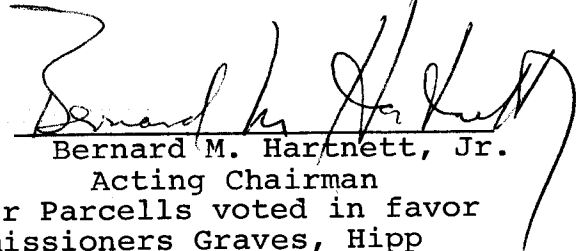
1. Forthwith resubmit salary schedules for 1980-81 to the Board in compliance with the expressed terms of the agreement.

2. Post at all places where notices to employees are customarily posted copies of the attached Notice marked "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 Association's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Association to insure that such Notices are not altered, defaced or covered by other material.

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

C. That the allegation in the Complaint that the Respondent Association violated section 5.4(b)(1) of the Act be dismissed.

BY ORDER OF THE COMMISSION



Bernard M. Hartnett, Jr.
Acting Chairman

Acting Chairman Hartnett and Commissioner Parcels voted in favor of this decision. None opposed. Commissioners Graves, Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
December 10, 1980
ISSUED: December 11, 1980

"APPENDIX A"

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 all employees represented by the Delaware Valley Regional Education Association that:

WE WILL cease and desist from refusing to reduce the negotiated agreement to writing by refusing to submit or agree upon a salary guide for the 1980-81 school year which complies with the express term of the agreement in effect from 1979-1981.

WE WILL forthwith resubmit salary schedules for the 1980-81 school year to the Delaware Valley Regional Board of Education in compliance with the express terms of our 1979-1981 agreement.

DELAWARE VALLEY REGIONAL EDUCATION ASSOCIATION

(Public Employer)

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 the Public Employment Relations Commission,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

DELAWARE VALLEY REGIONAL
EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CE-80-18-98

DELAWARE VALLEY REGIONAL
BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

In an action brought by the Delaware Valley Regional Board of Education, a Hearing Examiner recommends that the Public Employment Relations Commission find that the Delaware Valley Regional Education Association committed a violation of the New Jersey Employer-Employee Relations Act when it refused to structure a salary guide in compliance with the terms of a collective negotiations contract. The Hearing Examiner found the contract, signed and ratified by both the Association and the Board, was clear and unambiguous in its terms.

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.

STATE OF NEW JERSEY
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BOARD OF EDUCATION,

Charging Party.

Appearances:

For the Respondent
John A. Thornton, UniServ Rep., NJEA

For the Charging Party
Cassetta, Brandon Associates
Raymond Cassetta, Consultant

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (Commission) on February 13, 1980, by the Delaware Valley Regional Board of Education (Board or Charging Party) alleging that the Delaware Valley Regional Education Association (Association or Respondent) 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. (Act). The Charging Party and Respondent entered into, and subsequently ratified an agreement covering the 1979-80 and 1980-81 school years. It is alleged that the agreement was settled on a total dollar figure and the parties agreed

-2-

that the money involved would be distributed in a mutually agreeable fashion. Pursuant to the agreement the Association submitted a salary guide proposal for 1980-81. It is alleged that the salary guide had a total cost that exceeded the agreed upon dollar figure stated in the contract. It is alleged that the Association has refused to resubmit a new salary guide and took the position that the Board either accept the proposed guide or renegotiate the contract. The Board thereupon brought the instant charge claiming that the Association violated §§5.4(b)(1) and (4) 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 April 30, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held in Trenton, New Jersey, on June 5, 1980, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties submitted briefs by July 28, 1980.

* * * * *

The parties were engaged in negotiations for a successor collective negotiations agreement. On August 18, 1979, the parties appeared before a fact-finder who mediated a two-year agreement between the parties. This agreement was shortly thereafter ratified

1/ These subsections prohibit an employee organization, their representatives or agents from "(1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (4) refusing to reduce a negotiated agreement to writing and to sign such agreement."

by both sides. This agreement provided in pertinent part that:

"5. Teachers

E. The salary base for teachers for 1978-79 was \$1,319,373.00 for 76 teachers or \$17,360.00 average per teacher. This staff and its distribution on the salary guide shall be projected for each year of the Contract.

10. Salaries - Teachers

1979-80 - 7.2% above the 1978-79 cost to be distributed in a mutually agreeable fashion on the basis of the above quoted figures (Item #5.3.) including B+15 and M+15 scales in 1979-80. 1980-81 - 7.5% above 1979-80 as above.

20. Schedule B will be increased by 7.2% of the gross cost and 7.5% of the gross cost in 1979-80 and 1980-81. The distribution will be equitably determined by the D.V.T.A. subject to review by the Board."

The Association submitted a salary proposal for 1979-80 granting each employee a \$1250 increase. The Association based their computation upon the \$17,360 average teacher salary multiplied by .072 (or 7.2%) which came to \$1249.93. This was rounded off to \$1250. The Association also submitted a proposal for 1980-81. For this computation they multiplied .075 (7.5%) by \$18,610 (\$17,360 + \$1,250) to get \$1395.75. This was rounded off to \$1400. The computations made by the Association for co-curricular activities or Schedule B was based on the percentage increase plus increments.

The Board maintains that the Association's computations did not comply with the terms of the agreement. Their position is that the contract specifies that all salary computations are to be made on the basis of actual costs to the Board. Aside from Schedule

B, the district used two salary guides, one for tenured teachers and the other for non-tenured teachers. On either guide, the steps are in equal \$400 increments, but when a teacher goes from the non-tenured guide to the tenured guide, typically from the third to the fourth year, there is a \$2500 increase. It is the Board's position that, under the terms of the agreement, such costs had to come out of the negotiated increase. They argue that Section 10 of the contract provides for a percentage increase over the preceding year's cost. All increases come from this definite sum. Under the Association's proposal, there would be no funds available when an employee shifts from the non-tenured guide to the tenured guide. ^{2/}

The Board did accept the Association's salary guide for 1979-80 which exceeds the 7.2% cost increase by \$2,000 but the Board rejected the Association's 1980-81 salary guide which exceeded the negotiated 7.5% cost increase by approximately \$16,000. It further rejected the Association's proposed Schedule B claiming that paragraph 20 provides a 7.2% increase in the gross cost of salaries and therefore increments were meant to be included in that cost.

The Association argued that in the two prior negotiations the cost of movement from one salary guide to the other was absorbed by the Board and the Association maintains that their understanding was that this practice would continue. However, the testimony of Edward Schempp, the Board Secretary and school administrator, was that in the two prior negotiations, the negotiations centered on

^{2/} The Board took the position that cost of movement in the guide in terms of degrees or course work would be absorbed by the Board with the exception of movement to the B+15 and M+15 scales, which is expressly included in paragraph 10 of the agreement.

individual raises. This was the first time that negotiations, and the contract, were in terms of a fixed total cost to the Board. Schempp did admit that in prior years unanticipated additional costs that arose were absorbed by the Board, but these additional costs were always just a few hundred dollars and did not approach the \$16,000 overage in the Association's 1980-81 proposed salary guide.

Before the Association's arguments can be considered, first there must be a determination if the evidence proffered in support of the Association's arguments, which is parol evidence, can be considered.

There is no mention in the agreement of individual salaries, rather the contract is clear and expressly states that the increases are a certain percentage above the preceding year's costs as to both the regular salary guide and Schedule B. Nothing in paragraph 20 even remotely implies that increments should be tacked on the increase. The agreement is in terms of gross costs.

As a general principle, evidence of circumstances outside of, or extrinsic to, the the language of a contract is admissible for the purpose of interpreting the writing but not for the purpose of changing it. "So far as the evidence tends to show, not the meaning of the writing, but an intention wholly unexpressed in the writing, it is irrelevant." Atlantic Northern Airlines, Inc. v. Schwimmer, 12 N.J. 293 (1953).

"When two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence, either parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing." 3 Corbin § 573. 3/

Accordingly, since the Association's testimony as to past practice goes to a contract interpretation unexpressed by the agreement which effectively alters the terms of that agreement, it cannot be considered here. A determination of the allegations of the complaint must be based upon whether or not there was a constructive refusal to sign a negotiated agreement. The Association's salary guide proposal for 1980-81 and for Schedule B were not in accordance with the parties' agreement and accordingly I must recommend that the Commission find that the Association refused to mutually agree to fashion a salary guide for Schedule B and for the 1980-81 school year. In doing so, the Association violated §5.4(b)(4) by refusing to fashion a method of distribution of salary increases which in effect refused to reduce a negotiated agreement to writing.

No evidence was introduced to demonstrate that the Association violated §5.4(b)(1) by interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act. Accordingly, I recommend that the Commission dismiss that portion of the allegations of the Complaint.

RECOMMENDED ORDER


The Hearing Examiner recommends that the Commission ORDER

3/ See New Brunswick Board of Education and New Brunswick Education Association, P.E.R.C. No. 78-56, 4 NJPER 84 (¶4073, 1978).

(A) that the Respondent Association cease and desist from refusing to reduce a negotiated agreement to writing;

(B) that the Respondent Association take the following affirmative action:

Forthwith resubmit salary schedules to the Board in compliance with the expressed terms of the agreement.



Edmund G. Gerber
Hearing Examiner

DATED: October 10, 1980
Trenton, New Jersey