

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY TECHNICAL AND
VOCATIONAL HIGH SCHOOL BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-84-271-148

PASSAIC COUNTY TECHNICAL AND
VOCATIONAL HIGH SCHOOL EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants a motion for summary judgment which the Passaic County Technical and Vocational High School Education Association filed concerning the unfair practice charge the Association filed against the Passaic County Technical and Vocational High School Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with the Association over the terms and conditions of employment of academic/special needs teachers following the filing of a severance petition affecting only shop teachers. Under the undisputed facts of this case, the Commission determines that the Board had an obligation to negotiate with the Association concerning the terms and conditions of employment of academic/special needs teachers.

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Appearances:

For the Respondent, Edward G. O'Byrne, Esq.

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

DECISION ON MOTION FOR SUMMARY JUDGMENT

On March 29, 1984, the Passaic County Technical and Vocational Education Association, Inc. ("Education Association") filed an unfair practice charge against the Passaic County Technical and Vocational School Board of Education ("Board") with the Public Employment Relations Commission. The charge alleged that the Board violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to negotiate with the Association for a successor contract to follow the predecessor contract's expiration on June 30, 1984.

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."

On June 7, 1984, the Administrator of Unfair Practice Proceedings issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On June 14, 1984, the Board filed an Answer. It admits refusing to negotiate with the Association, but contends that it is legally required to refuse negotiations because of the filing of a Petition for Certification of Public Employee Representative by the Passaic County Technical and Vocational High School Shop Teachers Association ("Shop Teachers Association"). This petition seeks to sever "all shop teachers including non-academic teachers of technical and vocational high school subjects" from a unit consisting of both non-academic and academic teachers which the Education Association currently represents.^{2/} There are 225 teachers in the unit of which 65 are shop teachers. The Shop Teachers Association has advised that it has no interest in participating in this matter since it is not a party and "because no relief has been requested against [it]."

On July 26, 1984, the Education Association filed a Motion for Summary Judgment with supporting brief, documents and affidavit. It contends that it is entitled to summary judgment because it is the majority representative of the existing unit and there is no question concerning the representation of the academic/special needs teachers who compose over 70% of the present negotiations unit. It asserts that it is seeking

^{2/} On April 17, 1984, the Education Association's motion for summary judgment seeking to dismiss the petition was denied by Chairman Mastriani. In re Passaic Cty Tech. and Voc. High School, P.E.R.C. No. 84-121, 10 NJPER 268 (¶15131 1974). This matter has been remanded to the Administrator of Representation Proceedings and hearings have been scheduled.

negotiations only with respect to the titles and positions that are not subject to the pending petition.

On August 28, 1984, the Board filed a brief opposing summary judgment. It asserts that it cannot negotiate with an incumbent employee organization during the pendency of a representation petition. It relies on In re Bergen County, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983) and In re Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981). It further asserts that it has not acted in bad faith and "has offered to negotiate on direction of PERC."

Pursuant to N.J.A.C. 19:14-4.8, a motion for summary judgment may be granted if it appears from the pleadings, together with briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant is entitled to its requested relief as a matter of law. A motion for summary judgment, however, is to be granted with extreme caution. The moving papers are to be considered in the light most favorable to the party opposing the motion; all doubts are to be resolved against the movant; and the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182, 185 (App. Div. 1981); In re Essex County Educational Services Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982).

This case is ripe for summary judgment since the material facts are not in dispute. The Education Association is the majority

representative and seeks to negotiate only with respect to the titles and positions which are not subject to the severance petition. These employees compose over 70% of the existing unit and there is no indication that the resolution of the pending representation petition will impair the parties' ability to negotiate in good faith regarding the unaffected titles and positions.

Given these undisputed facts, we hold that the Board violated subsections (a)(5) and, derivatively, (a)(1) when it refused to negotiate with the Education Association concerning the titles and positions which were not subject to the representation petition. The principles of Middlesex County and Bergen County do not apply here since the petition seeks only to sever a minority of the professional employees from the overall negotiations unit of professional employees and there is no question concerning the representation of academic and special needs teachers. Under these circumstances, we do not believe the representation petition should serve to prevent the majority representative from discharging its statutory obligation. Accordingly, the Board's negotiations obligation at least with respect to the unchallenged positions continues.^{3/} It is settled that a pending petition is not a valid defense to an unfair practice complaint under such circumstances. See, e.g., Niagara University, 226 NLRB No. 154, 94 LRRM 1082 (1976); Glen-Manor Home for the Jewish Aged, 196 NLRB 1166, 80 LRRM 1434 (1972); The May Department

^{3/} Since the Association seeks to negotiate only with respect to the unchallenged titles and positions, we do not decide whether the Board's negotiations obligation remains in effect with respect to the shop teachers during the pendency of a severance petition.

Stores Company, 186 NLRB 86, 75 LRRM 1308 (1970). Accordingly, we hold that the pending severance petition, under the circumstances of this case, did not justify the Board's refusal to negotiate at least with respect to those employees who compose the substantial portion of the existing unit and who are not subject to the severance petition.

Finally, the Board's contention that it acted in good faith does not excuse a flat refusal to negotiate. See Hartz Mountain Corp., 266 NLRB No. 211, 113 LRRM 1117 (1983); The Developing Labor Law, at 562 (2nd Ed. 1983) (complete failure to engage in required negotiations is a per se violation irrespective of employer's good or bad faith). Under all the circumstances of this case, however, we find only a technical violation which may easily be remedied by ordering the Board to commence negotiations now.

ORDER


The Passaic County Technical and Vocational Board of Education is ordered to:

1. Negotiate in good faith with the Passaic County Technical and Vocational Education Association concerning terms and conditions of employment with respect to titles and positions which are not subject to the representation petition [RO-84-37] filed by the Passaic County Technical and Vocational High School Shop Teachers Association.

2. Post in all places where notices to employees are customarily posted copies of the attached notice marked as 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 Board's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Board to insure that such notices are not altered, defaced or covered by other materials; and

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Butch, Suskin, and Wenzler voted for this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
September 19, 1984
ISSUED: September 20, 1984

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 our employees that:

The Passaic County Technical and Vocational High School Shop Teachers Association has filed a petition seeking to represent shop teachers. These shop teachers are currently part of a negotiations unit of all academic and non-academic teachers which the Passaic County Technical and Vocational High School Education Association represents. We refused to negotiate with the Education Association about the terms and conditions of employment of non-shop teachers until we received direction from the Public Employment Relations Commission concerning our obligation to do so. The Commission has given us that direction and ordered us to negotiate. Accordingly, we will negotiate in good faith with the Education Association concerning the terms and conditions of employment of all teachers besides shop teachers.

PASSAIC COUNTY TECHNICAL AND
VOCATIONAL HIGH SCHOOL
BOARD OF EDUCATION

(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.