

P.E.R.C. NO. 93-74

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEPTUNE TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-92-359

NEPTUNE TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

Given the unfair practice allegations of the Neptune Township Education Association against the Neptune Township Board of Education and the evidence so far presented, the Public Employment Relations Commission cannot find, at this stage of the proceedings, that this dispute is moot. The Commission remands the matter to the Hearing Examiner to reopen the proceeding.

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Appearances:

For the Respondent, Patterson & Hundley, attorneys
(James T. Hundley, of counsel)

For the Charging Party, Klausner, Hunter, Cige & Seid,
attorneys (Brian M. Cige, of counsel)

DECISION AND ORDER

On May 6, 1992, the Neptune Township Education Association filed an unfair practice charge against the Neptune Township Board of Education. The charge alleges that 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 during contract negotiations, the Board made public a negotiations status report with incorrect salary guides attached. The Association claims that

^{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. (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...."

the Board tried to deal directly with unit members and violated an earlier settlement agreement that precluded distribution of the guides to employees in the negotiations unit while negotiations were still ongoing.

On August 13, 1992, the Board filed its Answer. The Board claims that when the report was issued, the parties needed only to ratify a memorandum of agreement. It further claims that the inclusion of modified salary guides in the report was a clerical error. Finally, it contends that since negotiations have been successfully completed, this matter is moot.

On October 2, 8, and 9, 1992, Hearing Examiner Alan R. Howe conducted a hearing. After the Association had presented five witnesses and before it presented four more witnesses it planned to call, the Hearing Examiner sua sponte dismissed the Complaint as moot. He permitted the Association to make an offer of proof regarding the remaining witnesses, but the offer did not persuade him not to dismiss the Complaint.

On December 1, 1992, after an extension of time, the Association requested review of the Hearing Examiner's determination. It argues that the Board intentionally released false salary guides notwithstanding a settlement agreement to the contrary and would again release guides and negotiate directly with unit members when in the future it becomes frustrated with the progress of negotiations. It further argues that without a complete record, the Hearing Examiner did not have sufficient evidence to

determine whether the Board's alleged illegal conduct had ceased, whether it is likely to recur, or whether the harm is de minimis. The Association contends that if we hold, in all circumstances, that entering into a collective negotiations agreement moots an unfair practice, parties will be encouraged to forestall agreements.

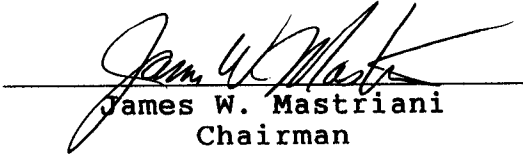
On January 5, 1993, after an extension of time, the Board filed a reply. It asserts that it did not violate the Act and that the Complaint is moot.

The Association has presented evidence concerning its allegations. We make no comment on the weight of that evidence or the Board's defense on the merits. Given the Association's allegations and the evidence so far presented, we cannot find, at this stage of the proceedings, that this dispute is moot.

ORDER

This matter is remanded to the Hearing Examiner to reopen this proceeding.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Smith voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Wenzler was not present.

DATED: February 22, 1993
Trenton, New Jersey
ISSUED: February 23, 1993