

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KENILWORTH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-96-76

KENILWORTH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In a consolidated matter with the Commissioner of Education, the Public Employment Relations Commission dismisses a Complaint against the Kenilworth Board of Education. The Complaint, which was based on an unfair practice charge filed by the Kenilworth Education Association, alleges that the Board violated the New Jersey Employer-Employee Relations Act when it refused to negotiate in good faith over the terms and conditions of employment for a new position, clerk/receptionist/attendance officer. A Petition of Appeal was filed by Linda Amitrano with the Commissioner of Education alleging that the Board violated her seniority and tenure rights by refusing to appoint her to the new position. The Commission concludes that the Association did not prove that the Board violated the Act by negotiating in bad faith or by not appointing Amitrano to the new position until August 1 rather than July 1, 1995. Consistent with a Joint Order between the Commissioner of Education and PERC, the remaining issues in the case are transferred to the Commissioner of Education.

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Appearances:

For the Respondent, James P. Granello, attorney

For the Charging Party, Balk, Oxfeld, Mandell & Cohen
attorneys (Gail Oxfeld Kanef, of counsel)

DECISION

On September 15, 1995, the Kenilworth Education Association filed an unfair practice charge against the Kenilworth Board of Education. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (5),^{1/} by refusing to negotiate in good faith over the terms and conditions of

^{1/} These provisions 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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, or refusing to process grievances presented by the majority representative."

employment for a new position, clerk/receptionist/attendance officer.

On September 29, 1995, Linda Amitrano filed a Petition of Appeal with the Commissioner of Education alleging that the Board violated her seniority and tenure rights by refusing to appoint her to the new position effective July 1, 1995.

On March 15, 1996, a Complaint and Notice of Hearing issued on the unfair practice charge. The hearing was postponed pending resolution of a motion to consolidate the charge with the Petition. The Board filed an Answer denying that it had violated the Act or education law.

Pursuant to a Joint Order of the Commissioner of Education and the Acting Chair of the Commission, the cases were consolidated. P.E.R.C. No. 97-1, 22 NJPER 265 (127139 1996). Commission Hearing Examiner Arnold H. Zudick was designated as a temporary Administrative Law Judge. On June 23, 1997, the parties stipulated facts and exhibits. They filed post-hearing briefs by October 1, 1997.

On October 27, 1997, the Administrative Law Judge issued an Initial Decision recommending dismissal of the consolidated matter. He concluded that the Board had not engaged in bad faith negotiations or otherwise violated the Act by bargaining hard over the salary for the clerk/receptionist/attendance officer position; had not discriminated against the Association by bargaining hard over the salary for the new position; and had not violated

Amitrano's seniority or tenure rights by placing her in the new position effective August 1 rather than July 1, 1995.

On November 19, 1997, the Association filed exceptions. It argues that the Board did not negotiate in good faith over the salary to be paid to Amitrano in the new position and that the Board was obligated to appoint Amitrano to the new position effective July 1, 1997.

On November 26, 1997, the Board filed a response urging adoption of the Initial Decision.

Pursuant to the Joint Order, this agency must first determine whether the Board violated the Act by not negotiating in good faith over terms and conditions of employment for the new position.

We have reviewed the record. We incorporate the ALJ's findings of fact. Given those facts, we agree with the ALJ that the Association did not prove a violation of the Act.

We reject the contention that the Board's hard bargaining constitutes bad faith bargaining. The Board was willing to negotiate compensation or arbitrate any alleged contractual violation. The ALJ properly applied State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976), and looked to the overall conduct and attitude of the party charged. Hard bargaining is not necessarily inconsistent with a sincere desire to reach an agreement. Id. at 40.


We also reject the contention that the Board violated the Act by not appointing Amitrano to the new position until August 1, 1995. According to documents in the record, the Board was not informed until July 27, 1995 that Amitrano was willing to work under the salary proposed by the Board, subject to ongoing negotiations with the Association. Until that time, the Board believed that Amitrano would not accept the new position unless the salary was acceptable to her and the Association. Once informed otherwise, the Board took immediate action to appoint Amitrano to the position, effective August 1, under the Board's terms pending the completion of negotiations. Under these circumstances, we cannot conclude that the Board was not acting in good faith by not appointing Amitrano on July 1.

Accordingly, we dismiss the Complaint. Pursuant to the Joint Order, we transfer the remaining issues to the Commissioner of Education.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Ricci and Wenzler voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Boose abstained from consideration. Commissioners Finn and Klagholz were not present.

DATED: January 29, 1998
Trenton, New Jersey
ISSUED: January 30, 1998