

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST ORANGE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-80-328-65

EAST ORANGE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice case, the Commission concluded that the Board had not violated N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act by preparing and submitting a budget prior to reaching a negotiated agreement with the Association concerning a salary schedule. The Commission held that the Board had negotiated in good faith with the Association prior to budget adoption and that there was no requirement in the Act that the Board had to agree to a salary schedule at any particular time. Finally, the Commission held that the Board could not be required to take certain actions that might violate the provisions of the Education Laws concerning budget preparation and public hearings.

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Appearances:

For the Respondent, Love and Randall, Esqs.
(Melvin Randall, of Counsel)

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs.
(Arnold S. Cohen, of Counsel)

DECISION AND ORDER

On May 5, 1980, the East Orange Education Association (the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission against the East Orange Board of Education (the "Board"), alleging that the Board violated certain subsections of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, it was alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5),^{1/} by adopting a school budget prior to reaching a negotiated agreement on a new salary schedule.

^{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."

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 December 10, 1980. Thereafter, on July 20, 1981, the parties met with the assigned Commission Hearing Examiner and agreed to Stipulations of Fact, which included an agreement pursuant to N.J.A.C. 19:14-6.7, to waive a hearing and a Hearing Examiner's Recommended Report and Decision and to submit the matter directly to the Commission for determination. Pursuant to the stipulated agreement, briefs were filed by the Board and the Association on September 16 and 17, 1981 respectively.

The Stipulations of Fact are brief in nature and are set forth below:

1. The East Orange Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, and is the employer of the employees involved herein.

2. The East Orange Education Association is an employee representative within the meaning of the Act and is the majority representative of the employees involved herein.

3. The parties met on October 8, 1979, December 13, 1979, and January 10, 1980, for the purpose of negotiating a successor agreement. Verbal requests were made by the Education Association to negotiate over salary and reach a salary schedule prior to January 14, 1980 budget adoption.

4. On or about January 14, 1980, Alice Molina, President of the Education Association, addressed the Board of Education at its public meeting and indicated that the salary schedule for positions represented by the Education Association should be negotiated prior to budget adoption.

5. The Board of Education adopted its 1980-81 school budget on January 14, 1980.

6. The parties reached a successor agreement on May 24, 1980.

7. The parties disagree as to whether the Board of Education is required to reach a salary schedule with the Education Association prior to budget adoption. The Education Association maintains that such a requirement existed, whereas the Board of Education argues to the contrary. The issue herein then is whether the Board of Education committed an unfair practice by adopting a budget prior to reaching agreement on a salary schedule with the Education Association.

8. The parties agree that there are no facts in dispute in this matter and pursuant to N.J.A.C. 19:14-6.7 they agree to waive a hearing and a Hearing Examiner's Recommended Report and Decision and to submit this matter directly to the Commission for determination based upon the charge, the complaint, the answer, the stipulations of fact, and the briefs and reply briefs.

9. The parties agree to the joint submission of briefs to be due on September 11, 1981, and to the submission of any reply brief to be due on September 21, 1981.

As a matter of law, parties are required to meet at reasonable times and negotiate in good faith concerning terms and conditions of employment. There is no evidence upon which the Commission could conclude that either party herein failed to negotiate in good faith concerning terms and conditions of employment. Rather, the issue herein is limited to whether the Board violated the Act merely by adopting its budget prior to reaching a salary agreement with the Association. We conclude that it did not.

The facts show that the parties were negotiating prior to budget adoption and the Charging Party did not allege, nor do the stipulated facts prove, that the Board negotiated in bad faith. It is well settled law that the definition of what constitutes good faith negotiations does not obligate any party to reach an agreement on a term and condition of employment.^{2/} Since the parties were negotiating - presumably in good faith - over the terms of a new agreement, the Board met its obligations under the Act and was not required to reach an agreement with the Association at any particular time with respect to a salary schedule.

Nothing in the Act requires the Board to reach an agreement with respect to any specific issues prior to budget submission or at any other particular time. While N.J.S.A. 34:13A-5.4(e) of this Act anticipates that negotiations will begin prior to the

^{2/} In re Council of N.J. State College Locals, E.D. 79, 1 NJPER 39 (1975), aff'd sub nom State v. Council of New Jersey State College Locals, 141 N.J. Super. 470 (App. Div. 1976).

public employer's budget submission date "so that there will be a full opportunity for negotiations and the resolution of impasses prior to required budget submission dates," it does not compel agreement prior to the adoption of a budget or any other specified date.^{3/} Under the facts of this case, it appears that the Board did negotiate in good faith with respect to the salary guide and other terms and conditions of employment, and we cannot conclude that it violated that obligation by adopting its budget when it did.

Our conclusion is further supported by the fact that boards of education operate under a statutory budget process set forth in the Education Law at N.J.S.A. 18A:22-7 et seq., which establishes mandatory dates by which the various steps of the budget process, including adoption, must be completed. Given nature of the negotiations process, it is common that the parties have been unable to reach a mutually acceptable agreement by the time a budget must be adopted. Assuming good faith negotiations by both parties, an unfair practice could not be found against only one of those parties because no agreement had been achieved.

Accordingly, based upon a review of the entire record in this matter, we find that the Board's actions did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5).

^{3/} Absent some form of imposed finality to the negotiations process such as interest arbitration, it is difficult to envision how it could.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Complaint be dismissed in its entirety.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels and Suskin voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained.

DATED: October 2, 1981
Trenton, New Jersey
ISSUED: October 5, 1981