

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-82-27-44

PASSAIC TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts a recommendation of a Hearing Examiner and dismisses a Complaint issued on an Unfair Practice Charge the Passaic Township Education Association filed against the Passaic Township Board of Education. The Charge, as amended, had alleged that the Board violated the New Jersey Employer-Employee Relations Act when it unilaterally adjusted the salary of the Gillette School secretary in contravention of a negotiated agreement. The Commission finds that the Association did not prove its allegations by a preponderance of the evidence.

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Appearances:

For the Respondent, Wiley, Malehorn & Sirota, Esqs.
(Donald M. Malehorn, of Counsel)

For the Charging Party, John W. Davis, NJEA
UniServ Representative

DECISION AND ORDER

On October 13, 1981, the Passaic Township Education Association ("Association") filed an amended unfair practice charge against the Passaic Township Board of Education ("Board") with the Public Employment Relations Commission. The charge, as amended, alleged 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), (3) and (5),^{1/} by unilaterally

I/ 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; (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; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit, or refusing to process grievances presented by the majority representative."

adjusting the salary of the Gillette School secretary in contravention of the negotiated agreement.

On November 5, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Board then filed an Answer in which it averred that it had promoted the Gillette School secretary to a higher classification already occupied by the Millington School, Central School, and Special Services secretaries because her duties had increased to match those of the other secretaries, and that the change in the Gillette School secretary's salary rate was in accordance with the salary provisions of the parties' 1981-1983 collective agreement.

On December 21, 1981, Commission Hearing Examiner Alan R. Howe conducted a hearing and afforded the parties the opportunity to examine and cross-examine witnesses, present evidence, and argue orally. The Association presented documentary evidence, but did not call any witnesses. The Board did not present any evidence. The parties filed post-hearing briefs by January 28, 1982.

On February 8, 1982, the Hearing Examiner issued his report. H.E. No. 82-30, 8 NJPER ____ (¶ ____ 1982) (copy attached). Concluding that no violation occurred, he recommended that the Complaint be dismissed.

On February 16, 1982, the Association filed Exceptions raising several objections to the Hearing Examiner's analysis of

the facts. On February 18, 1982, the Board filed a response.^{2/}

We have reviewed the record and the exceptions. We dismiss the Complaint because the documents the Association submitted did not prove its allegations by a preponderance of the record evidence.^{3/}

The documents do not establish that the Board refused to negotiate the salary the Gillette secretary would receive or that her salary contravened a negotiated salary schedule. Instead, on May 20, 1981, the Board expressed its willingness to negotiate this matter. It appears from the exhibits, introduced without any clarifying testimony, that the parties subsequently reached and ratified an agreement with salary schedules clearly placing the salary of the Gillette School secretary on the same level and classification as the Millington, Central, and Special Services secretaries.^{4/} Thus, on the basis of this limited record, and in

^{2/} The Association has also requested oral argument. We decline this request.

^{3/} The Association's representative made comments on the record concerning several of the documents he introduced. For example, he stated that the negotiated increase for the 1981-83 collective agreement contained a 10.5% increase for the first year and a 9.5% increase for the second. The Hearing Examiner correctly concluded that the representative's comments were not record evidence, but merely argument. Accordingly, we limit our review to the documents the Association introduced. While a review of these documents does not persuade us that an unfair practice occurred, we disagree with the Hearing Examiner's findings on the May 26, 1981 mediation session: the record is silent as to what occurred at that meeting.

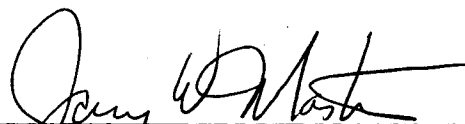
^{4/} We reject the Association's argument that it should not be bound by the salary schedules in the tentative agreement because the Board prepared this agreement and the Association signed it without fully reviewing it. The parties to a collective agreement have a responsibility to make sure that the agreement they sign accurately reflects the agreement they reached. In the absence of any allegations supporting an estoppel claim, a party must accept the consequences of a failure to review carefully an agreement it signs.

the absence of evidence persuading us that the tentative and final 1981-1983 agreements do not apply, we find that the Association's Exceptions are without merit. Accordingly, we dismiss the Complaint.

ORDER

IT IS HEREBY ORDERED that the Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett and Suskin voted in favor of this decision. None opposed. Commissioners Graves and Hipp abstained. Commissioner Newbaker was not present.

DATED: Trenton, New Jersey
May 4, 1982
ISSUED: May 5, 1982

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

In the Matter of

PASSAIC TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-27-44

PASSAIC TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner grants a Motion to Dismiss a charge of unfair practices, which alleged that the Respondent violated Subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act when it adopted a resolution on June 8, 1981 eliminating the salary differential between one secretarial unit member in relationship to all other secretaries, effective September 1, 1981, without negotiations with the Association. The Hearing Examiner found that the elimination of the differential had occurred in collective negotiations on May 26, 1981, which was formalized in an Agreement in Principle on June 25, 1981, and later incorporated into the final agreement, which was ratified by the Association on September 8, 1981. An attempted reservation by the Association on September 8, 1981 operated only to protect the Association's right to proceed with the instant Unfair Practice Charge.

A Hearing Examiner's decision to dismiss is not a final administrative determination of the Public Employment Relations Commission. The Charging Party has ten (10) days from the date of the decision to request review by the Commission or else the case is closed.

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Appearances:

For the Respondent

Wiley, Malehorn & Sirota, Esqs.
(Donald M. Malehorn, Esq.)

For the Charging Party

John W. Davis, UniServ Rep.

HEARING EXAMINER'S DECISION
ON MOTION TO DISMISS

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on August 6, 1981, and amended on October 13, 1981, by the Passaic Township Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Passaic Township Board of Education (hereinafter the "Respondent" or the "Board") 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. (hereinafter the "Act"), in that the Respondent on June 8, 1981 unilaterally adjusted the salary of a secretarial unit member, effective September 1, 1981, which contravened the negotiated salary schedule and caused disparate treatment of all other similarly situated unit members, all which was alleged to

be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) of the Act. ^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 5, 1981. Pursuant to the Complaint and Notice of Hearing a hearing was held on December 21, 1981 in Newark, New Jersey at which time the parties were given the opportunity to examine witnesses, present relevant evidence and argue orally. ^{2/} The parties filed post hearing briefs by January 28, 1982.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Passaic Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

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.

"(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."

2/ At the conclusion of the Charging Party's case, the Respondent made a Motion to Dismiss on the record. The Hearing Examiner deferred his ruling and requested the Respondent to present its case with the understanding that if a Motion to Dismiss should be granted it would be done. Thereafter the Respondent elected to present no evidence and rested. The Respondent's Motion to Dismiss is granted for the reasons hereinafter set forth.

2. The Passaic Township Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The Respondent operates three schools within the District, namely, Central, Millington and Gillette.

4. The instant case is concerned with the salaries of secretaries at the Central, Millington and Gillette schools. In years past there has been a differential in salary between the secretaries at Central and Millington and the single secretary at Gillette. This differential is most recently set forth in the 1979-80 and 1980-81 salary guides for secretaries (CP-11 and CP-12).

5. Negotiations for a successor agreement commenced in October 1980 and continued through May 1981.

6. Under date of March 26, 1981 Frances L. LaPorta wrote to Mary Winiarski, a Board member and Chairman of its negotiations committee, complaining that she, as the secretary of the Gillette school, was being paid at the rate \$5.13 per hour while the other secretaries at the Central and Millington schools were being paid at the rate of \$5.65 per hour (CP-1). LaPorta requested that this inequity be eliminated in the current negotiations.

7. On May 18, 1981 the President of the Association, Tallulah W. Conn, wrote to the Board's Superintendent, Anthony Gonnella, requesting that the Association would like to take up the LaPorta matter with the Board at the next negotiations session which was then in the mediation phase (CP-2). Gonnella so agreed under date of May 20, 1981 (CP-3).

8. On May 26, 1981 a negotiations session was held under the auspices of a mediator, which ultimately resulted in a tentative collective negotiations agreement for the period July 1, 1981 through June 30, 1983.

9. At a public meeting of the Board on June 8, 1981 the President of the Association, Conn, read a letter objecting to a proposed action by the Board

with respect to a position entitled "Secretary to the Principal/Child Study Team Leader," stating that any action of the Board would unilaterally establish a compensatory plan for one position (at Gillette) and further, that the matter should be considered "... in light of the need to assess all secretaries' positions so as to equally apply the upgrading provisions for all other secretaries ..." (CP-6).

10. Notwithstanding Conn's plea (CP-6, supra), the Board adopted a resolution on June 8, 1981, effective September 1, 1981, directing that the job classification of LaPorta be changed from "Secretary Gillette" to "Secretary, Millington, Central, Special Services" and that LaPorta's salary be adjusted accordingly, consistent with the salary guide for secretaries ultimately negotiated as part of the contract for the 1981-82 school year (CP-5).

11. On June 25, 1981 a meeting was held between Winiarski, as Chairman of the Board's negotiations committee, Camilla Murphy, another Board member, Conn, as President of the Association and Clarice Olinger, the Association's Chief Negotiator. The purpose of the meeting was to formalize the tentative agreement reached at the negotiations session on May 26, 1981, supra. An Agreement in Principle was reached at this meeting and was signed by Winiarski and Olinger (CP-7). This Agreement in Principle contained, inter alia, salary guides for secretaries for 1981-82 and 1982-83 and provides clearly that the salary differential between the secretaries at Central and Millington, and the single secretary at Gillette, has been eliminated.

12. The instant unfair Practice Charge was filed on August 6, 1981. Shortly thereafter a complete and final Agreement embodying the provisions of the Agreement in Principle (CP-7, supra) was prepared and ratified by the parties on September 8, 1981 (CP-8 and CP-10). However, Olinger, on behalf of the Association, read a statement at a special meeting of the Board on September 8, 1981, indicating that while the Association had ratified the Agreement "... in no way do we accept the change of position as indicated in the unfair labor practice

on file with PERC ..." (CP-9). The Board minutes of September 8, 1981 (CP-10) indicate that Olinger was present when the Board's attorney stated that Olinger's statement (CP-9) "...is not tied to the (sic) change of position under the contract but is tied to the pending Unfair Labor Practice charges. They are preserving their rights ...They are not trying to modify or hold back on the ratification... there is no reservation of that ratification, so they are ratifying the agreement in full..." (CP-10, p.3). Olinger never responded to or contradicted the Board's attorney on the matter of the import of the Association's ratification although the Board minutes disclose that she spoke thereafter.

13. The salary guides for secretaries and clerks for the school years 1979-80 and 1980-81 (Schedule B) were received in evidence as CP-11 and CP-12, respectively.

THE ISSUE

Did the Respondent Board violate Subsections(a)(1), (3) and (5) of the Act on June 8, 1981 by adopting a resolution, which adjusted the salary of a secretarial unit member, effective September 1, 1981, without negotiations with the Association?

DISUCSSION AND ANALYSIS

The Respondent Board Did Not Violate Subsections(a)(1), (3) And (5) Of The Act On June 8, 1981 By Adopting A Resolution Adjusting The Salary Of A Secretarial Unit Member Without Negotiations With The Association

Introductory Statement

The record in this case consists of twelve documentary exhibits (CP-1 through CP-12) and three stipulations of fact. The Respondent, in its brief, takes repeated issue with the Charging Party's arguments and brief over the fact that the Charging Party has sought to inject matters not of record.

The parties are advised that the Hearing Examiner in rendering this decision has been a "strict constructionist" and has relied only upon the exhibits and

stipulations of record. Thus, for example, the Charging Party's assertion that the negotiated increase for 1981-82 and 1982-83 was 10.5% and 9.5%, respectively, has been ignored. Additionally, any references by the Charging Party to what transpired at the May 26, 1981 Mediation Session or the meeting on June 25, 1981 when the Agreement in Principle was signed have been disregarded.

The Association Has Failed To
Prove That There Was A Unilateral
Change In The Salary Of The Gillette
School Secretary Contrary To The
Negotiated Agreement

At the time that the Board adopted a resolution on June 8, 1981, regarding Frances L. LaPorta's change from "Secretary Gillette" to "Secretary, Millington, Central, Special Services," with a salary adjustment accordingly, "consistent with the salary guide for secretaries ultimately negotiated as part of the contract for the 1981-82 school year" (CP-5), the parties had already reached a basic tentative agreement for the 1981-83 school years at the Mediation Session on May 26, 1981 (see Finding of Fact Nos. 8 and 10, supra). The parties, through their negotiators, then attended a meeting on June 25, 1981 wherein an Agreement in Principle (CP-7) was reached and signed by the Chief Negotiators for the parties (see Finding of Fact No. 11, supra).

The foregoing Agreement in Principle contained, inter alia, salary guides for secretaries for 1981-82 and 1982-83 and provided clearly that the salary differential between the secretaries at Central and Millington and the single secretary at Gillette had been eliminated (compare Schedules B in CP-7 and CP-8 with CP-11 and CP-12). To reiterate, the Schedules B in CP-7 and CP-8 make it abundantly clear that the salary differential between the secretary at the Gillette School, LaPorta, and the other secretaries, was eliminated in the tentative agreement reached at the Mediation Session on May 26, 1981 and when the Association ratified the tentative agreement on September 8, 1981.

Further, it is clear that the Board did not refuse to negotiate the elimi-

nation of LaPorta's differential in pay from that of other secretaries. This is indicated by Association President Conn's letter of May 18, 1981 to the Board's Superintendent, Gonnella, which requested that the Association would like to take up the matter of the LaPorta differential with the Board at the next negotiations session (CP-2). Gonnella agreed under the date of May 20, 1981 (CP-3) and the matter of LaPorta's differential was negotiated as requested at the May 26, 1981 Mediation Session.

Thus, there was no refusal on the part of the Board to negotiate the Association's request that LaPorta be paid at the same hourly rate as that received by the other secretaries. At the Mediation Session on May 26, 1981 the rate of the Gillette School Secretary, LaPorta, was equalized with that of other secretaries and this is reflected in the Agreement in Principle, which was dated and executed on June 25, 1981 (CP-7). The said Agreement in Principle was executed by Winiarski, as Chairman of the Board's negotiations committee and by Olinger, the Association's Chief Negotiator.

The Agreement in Principle was executed by Olinger after the Board's adoption of the resolution of June 8, 1981 and does not indicate that Olinger registered or noted any disagreement or reservation with respect to the Board's action. Further, it is noted that the salary guides (Schedule B) set forth for secretaries in the Agreement in Principle (CP-7) were identical to the salary guides (Schedule B) in the final agreement, which was ratified by the Association on September 8, 1981 (CP-8).

All Aspects Of The 1981-83 Agreement,
Including The Salary Guides For
Secretaries And Clerks, Were Ratified
And Approved By The Association On
September 8, 1981

The Hearing Examiner rejects the argument of the Association that there was a reservation in the approval and ratification of the 1981-83 agreement by the statement of Olinger, which was read at the special meeting of the

Board on September 8, 1981 (CP-9). Olinger's statement indicates at the outset that the Association had ratified the agreement with a subsequent qualification that the Association does not accept "...the change of position as indicated in the unfair labor practice on file with PERC." The Association did not seek to or place upon the agreement (CP-8) any written reservation limiting approval to all sections in the agreement except the guides for secretaries and clerks (Schedule B). The Association merely reserved its right to continue to prosecute the pending Unfair Practice Charge, which right it might otherwise have given up in the course of "settling the contract."

It is significant that after Olinger read her statement, the Board's attorney stated:

"...this is not tied to the (sic) change of position under the contract but is tied to the pending Unfair Labor Practice charges. They are preserving their rights under the present pending unfair labor practice. They are not trying to modify or hold back on the ratification of the contract, there is no reservation of that ratification, so they are ratifying the agreement in full whatever impact that has on the pending charge, it has." (CP-10, p.3).

The Board minutes indicate further that Olinger was present before, during and after the Board attorney made the above statement and that she did not comment in any way or rebut the explanation by the Board attorney of the Association's ratification. Immediately thereafter, the Board voted to approve the agreement without exception, including the guides for secretary and clerks (Schedule B).

In conclusion, the documentary evidence indicates clearly that both parties to the 1981-83 agreement ratified it in toto without qualification or reservation. The Association, of course, reserved the right to proceed with the instant Unfair Practice Charge, which it has done in the hearing in this matter. In retrospect, all that the Board did on June 8, 1981 was to give formal recognition to the fact that the prior wage differential of LaPorta had been eliminated in negotiations, which was included in the tentative agreement reached at the Mediation Session on May 26, 1981 and set forth in writing in the Agreement in Principle

on June 25, 1981.

* * * *

For all of the foregoing reasons, the Hearing Examiner will recommend dismissal of all allegations in the Unfair Practice Charge, as amended.

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) by the adoption of a resolution on June 8, 1981, which adjusted the salary of secretarial unit member Frances L. LaPorta, effective September 1, 1981.

ORDER

For all of the foregoing reasons the Hearing Examiner ORDERS that the Motion To Dismiss be granted and that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: February 8, 1982
Trenton, New Jersey