P.E.R.C. NO. 78-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLACK HORSE PIKE REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent,

Docket No. CO-77-232-69

-and-

BLACK HORSE PIKE REGIONAL EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Black Horse Pike Regional Education Association filed an unfair practice charge against the Black Horse Regional School District Board of Education alleging that, subsequent to the Association's failure to ratify a tentative memorandum of agreement, the Board refused to resume negotiations in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5). The Association, relying on four separate grounds, contended the Board was fully aware that a vote by the Association's membership was a condition precedent to a binding agreement. The Board denied the validity of all of these grounds and asserted that, under Article II c of the parties previous agreements, the Association had agreed to terminate the ratification procedure.

The Hearing Examiner, having rejected three of the Association's arguments, found that there was an established practice of Association ratification. Further, the Hearing Examiner found that Article II c was ambiguous and not controlling on the question of whether ratification by the Association's membership was required for a binding agreement. Accordingly, the Hearing Examiner concluded that the Board had violated N.J.S.A. 34:13A-5.4(a)(1) and (5).

The Commission adopts the Hearing Examiner's conclusion that the Board knew the Association had reserved the right to have a ratification vote by its membership. However, the Commission does not adopt the findings of fact and law by which the Hearing Examiner reached this conclusion; but rather relies on a different factual and legal analysis.

Specifically, the Commission, in applying the criteria established in prior Commission decisions, will consider only

whether, during the course of the particular negotiations in dispute, there was an absence of oral or written qualifying statements or general conduct by negotiating representatives from which binding authority to conclude an agreement could reasonably be inferred. Applying this criteria to the instant dispute, the Commission, in analyzing and weighing the conflicting testimony concerning oral qualifying statements, finds that oral statements were made by Association representatives that evinced the need for the Association membership to ratify a tentative agreement.

Therefore, the Commission orders the Board to cease and desist from interfering with employee rights by refusing to negotiate in good faith. Further, the Board is ordered to negotiate on demand with the Association's representatives concerning terms and conditions of employment for the 1976-77 and 1977-78 academic years.

P.E.R.C. NO. 78-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLACK HORSE PIKE REGIONAL
SCHOOL DISTRICT BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-77-232-69

BLACK HORSE PIKE REGIONAL
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Black Horse Pike Regional
School District Board of Education
Hyland, Davis & Reberkenny
(Mr.William C. Davis, of Counsel)

For the Black Horse Pike Regional
Education Association
(Mr. Joel S. Selikoff, Of Counsel)

DECISION AND ORDER

On February 23, 1977 an Unfair Practice Charge was filed with the Public Employment Relations Commission by Black Horse Pike Regional Education Association (the "Association") alleging that the Black Horse Pike Regional School District Board of Education (the "Board") engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act as amended, N.J.S.A. 34:13A-1, et seq. (the "Act"). Specifically, the Association alleged that, subsequent to the Association membership's rejection of a tentative memorandum of agreement, the Board refused

to resume negotiations in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5).[1/]

The Charge was processed pursuant to the Commission's Rules and, it appearing to the Director of Unfair Practices 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 April 18, 1977. A hearing was held on October 11, 12 and 13, 1977, before Edmund G. Gerber, Hearing Examiner of the Commission, at which both parties were represented and were given an opportunity to present evidence, to examine witnesses, and to argue orally. Both parties waived their right to submit briefs.

On March 7, 1978 the Hearing Examiner issued his Recommended Report and Decision,[2/] which included findings of fact, conclusions of law, and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached to this Decision and Order and made a part hereof. Exceptions were filed by the Board on March 20, 1978. Pursuant to an approved request for an extension of time, exceptions and a brief in support thereof were filed by the Association on April 18, 1978.

1/ These subsections prohibit 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, or refusing to process grievances presented by the majority representative."

2/ H.E. No. 78-28, 4 NJPER 137 (¶4064 1978).

The Hearing Examiner found that there exists an established practice in the district of ratification of contracts by the Association membership. Further, the Hearing Examiner found that Article II c[3/] of the parties' previous agreements was ambiguous and not controlling on the question of whether the Association's membership was required to ratify an agreement, thereby compelling a consideration of past practice. Accordingly, the Hearing Examiner concluded that the Board had violated N.J.S.A. 34:13A-3.4(a)(1) and (5).

The Commission adopts the Hearing Examiner's conclusion that the Board violated the Act by refusing to negotiate with the Association following the rejection of the proposed contract by the Association's membership. However, the Commission does not adopt the finding of fact and law by which the Hearing Examiner reached this conclusion but rather relies on a different factual and legal analysis.

The Hearing Examiner considered four arguments advanced by the Association to prove the charge: 1) that the Association's constitution required membership ratification of all agreements and that the Board members were aware of the requirement; 2) that the Board's conduct in meeting with the Association after the Association membership rejected the proposed contract demonstrated that

3/ This section provides: "The parties in the course of negotiations shall select their own representatives. The parties mutually pledge their representatives shall be clothed with the appropriate power and authority to make proposals, consider proposals and do all that is necessary and proper for bona fide negotiations; provided however, that is understood that no action binding Board can be taken other than at a public meeting pursuant to a formal vote."

the Board was aware that the Association had signed the agreement subject to ratification; 3) that there was an expressed oral agreement at the first negotiations session that both parties had the right to ratify any proposed agreement and that this was brought up during the course of negotiations and when the memorandum was signed; and 4) that the past history of negotiations between the parties made the Board aware that any agreement was always subject to ratification by the Association.

The Hearing Examiner based his conclusion on the fourth of these arguments. However, we base our conclusion on the third argument and explicitly reject the fourth argument.

In order for collective negotiations to be effective and productive, it is essential that each participant know with certainty the extent of the opposing negotiating team's authority. A party must be able to rely on the statements and general conduct of the other side's representatives during the negotiations process. Accordingly, the Commission, in applying the criteria established in the Bergenfield and East Brunswick [4/] decisions, will consider only whether, during the course of the particular negotiations in dispute, there was an absence of oral or written qualifying statements or general conduct by negotiating representatives from which binding authority on the part of the negotiating teams to conclude

4/ In re Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 44 (1975); In re East Brunswick Board of Education and East Brunswick Administrators Association, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), motion for reconsideration denied, P.E.R.C. No. 77-26, 3 NJPER 16 (1977), dismissed as moot 12/2/77, App. Div. Docket No. A-250-76 (Unpublished Opinion).

an agreement could reasonably be inferred. To consider the additional factor of past history of ratification would only cause confusion and disruption to the negotiations process. A party would be uncertain whether to rely on the practice of ratification in previous negotiations or the current representations of binding authority by the negotiating representatives.

Applying this criteria to the instant dispute, the Commission, in analyzing and weighing the conflicting testimony concerning oral qualifying statements made during the course of negotiations, finds that such oral statements were made by the Association's representatives which either did or should have made the Board aware of the requirement that any proposed agreement required the ratification of the Association's membership.

The Hearing Examiner found that the Association had not met its burden of proof on this issue. However, he failed to consider documentary evidence, discussed below, which supports the testimony of the Association's witnesses. Further, the Commission does not agree with the Hearing Examiner's analysis of the testimony by the Board's witnesses, wherein they admitted that at various times during the negotiations an Association representative stated that he would have to "sell the contract."

Numerous witnesses for the Association testified that during the first negotiations session, basic procedural ground rules were established; one of which was the requirement of Association ratification.[5/] Notes taken by one of the Association's repre-

5/ The testimony of the Association's witnesses concerning oral qualifying statements reserving the right to membership ratification is consistent with the past practice of ratification found by the Hearing Examiner.

sentatives at this meeting contains the following entry: "We explain that we represent Association - will need to bring back contract to them." This notation clearly supports the testimony of the Association's witnesses and constitutes persuasive evidence.[6/]

Further, both of the Board's witnesses admitted that another of the Association's representatives stated on several occasions that he had to "sell the contract." The Hearing Examiner concluded that this phrase could simply mean that the members of the Association would have to be convinced that the best possible deal had been obtained for them. The Commission, in rejecting this analysis by the Hearing Examiner, holds that, in the context of labor negotiations, the phrase to "sell the contract" is a term of art with a clear meaning: that the contract is subject to ratification by the representative's principals who will have to be persuaded as to its acceptability.

The Association's representative was a labor relations professional and previously dealt with the Board's representatives, all of whom were experienced negotiators. In the context of this situation, it was reasonable for this professional to use this term of art and expect that the Board's negotiators would understand his statement.[7/] If they did not, the burden was on them to

6/ Due to the passage of time and the fading of memories, documentary evidence is normally more persuasive than oral testimony.

7/ Again, the past practice of Association membership ratification is consistent with the use of the term "sell the contract" and the expectation that the term was understood by the Board.

question its meaning or significance. From their silence, the Association's representative was reasonable in concluding that he had been understood. The Association, therefore, complied with the requirements of Bergenfield and East Brunswick, supra, by making an oral qualifying statement regarding the need to ratify the proposed agreement. Thus, the Board will be held to have had constructive knowledge of the reserved right to a ratification vote by the full Association membership.

Since the Commission has affirmed the Hearing Examiner's conclusion on different factual and legal grounds from those relied upon by him, most of the Board's exceptions are no longer relevant. We adopt the Hearing Examiner's findings of fact and conclusions of law regarding the Association's first two arguments set forth above. As to the remaining exceptions, the Board contends that the Hearing Examiner acted improperly in refusing to allow testimony concerning the alleged failure of the Association's leadership and a member of the negotiating team to support the memorandum of agreement when it was presented to the membership for ratification.

The Commission finds that the Hearing Examiner's ruling was correct. This testimony would be relevant to the issue of bad faith by the Association, but is irrelevant to the question of whether the Association's representatives had binding authority. Since the Board did not file a charge alleging bad faith negotiations by the Association, the testimony was correctly excluded..

Further, contrary to the Board's contention, the fact that a member of the Association's representative council also was on the negotiating team does not constitute action by principals rather than agents, as found in Bergenfield, supra, where two and at times three of the five Board members participated in negotiations.

Next, the Board excepts to the Hearing Examiner's finding that Article II c is not controlling on the question of whether the Association had reserved the right to membership ratification. The Board contends that under this article of the parties previous agreement, the Association had agreed to terminate the ratification procedure.

The Commission rejects this exception and adopts the Hearing Examiner's finding. Article II c, as it relates to the Association's negotiations responsibilities, simply incorporates the requirements for good faith negotiations implicit in the Act: that the parties have the right to select their own representative who will have the authority to make and consider proposals and engage in all other necessary and proper activities for bona fide negotiations. The article is silent on the need for Association ratification, while it specifically states that such action must be taken by the Board for a binding agreement. It strains credibility to believe that two experienced members of the Board's management team honestly believe that by this contractual provision the Association was agreeing to eliminate the long standing practice

of ratification.[8/] The wording of the provision persuades us that it was simply intended to protect and make clear the legal obligation of the Board to take formal action on the contract at a public meeting.

Finally, the Board objects to the posting of the notice shown as Appendix A in the Hearing Examiner's Report on the basis that the Board did not willingly or knowingly commit any of the violations stated in the notice, but acted in good faith under its honest interpretation of the Act and prior Commission decisions. In response, it suffices to say that good faith is no defense to a violation of the Act. We have, however, modified that order to conform to the relief requested by the Association in its charge.

Several of the Association's exceptions have also been disposed of by our decision herein. We see no need to comment on the Association's attack on the Board's exceptions on both procedural and substantive grounds. We have rejected the Association's exceptions regarding the Hearing Examiner's failure to accept the first two of the four arguments, listed above, relied upon by the Association. We have also rejected the Association's argument accepted by the Hearing Examiner, that past practice establishes the right of a party to ratify a contract. As we held in Bergenfield, supra, in the absence of conditions precedent in a memorandum of

8/ Article II-c was first incorporated into the 1970 contract. There was substantial testimony by the Association's witnesses that it continued to utilize the ratification procedure subsequent to the incorporation of Article II-c.

understanding or other document or other express qualifying conditions, a party is entitled to rely upon the apparent authority of the representatives of the other party to conclude a binding agreement. We have found on the facts in this case that the Association did notify the Board of the Association's requirement that the agreement reached by the negotiators was subject to membership ratification.

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED, that the Board shall:

1. Cease and desist from interfering with, restraining and coercing its employees in the exercise of rights guaranteed to them by the Act by refusing to negotiate in good faith with the majority representative of its employees concerning terms and conditions of employment for 1976-77 and 1977-78. 9/

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

a. Upon demand by the Association, negotiate with its representatives concerning the terms and conditions of employment for the 1976-77 and 1977-78 academic years.

b. Post immediately, in plain sight, in all school buildings of the Black Horse Pike Regional School District Board

9/ The Hearing Examiner in his recommended order and notice refers to the periods 1975-76 and 1976-77. From the Association's charge, the memorandum of agreement (exhibit A-2), and the transcript it is clear that the Board's refusal to negotiate concerned an agreement covering the period 1976 through 1978. Apparently there is a clerical error in the Hearing Examiner's Recommended Order and Notice which the Commission now corrects.

of Education, copies of the attached notice marked "Appendix A". Copies of said notice, on forms to be provided by the Public Employment Relations Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices will not be altered, defaced or covered by any other material.

c. Notify the Chairman, in writing, within twenty (20) days of receipt of this ORDER what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcells voted for this decision. None opposed. Commissioners Graves and Schwartz abstained. Commissioner Hipp was not present.

DATED: Trenton, New Jersey
June 30, 1978
ISSUED: July 5, 1978

APPENDIX A

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:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of rights guaranteed to them by this Act by refusing to negotiate in good faith with a majority representative of employees concerning terms and conditions of employment for the 1976-1977 and 1977-1978 school years.

WE WILL, upon demand by the Association, negotiate with its representatives concerning terms and conditions of employment for the 1976-1977 and 1977-1978 school years.

BLACK HORSE PIKE REGIONAL SCHOOL
DISTRICT 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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209 [illegible]

H.E. No. 78-28

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

In the Matter of

BLACK HORSE PIKE REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-77-232-109

BLACK HORSE PIKE REGIONAL EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends to the Public Employment Relations Commission that it find the Black Horse Pike Regional School District Board of Education committed an unfair practice when it refused to negotiate with the representatives of the Black Horse Pike Regional Education Association for the 1976-77 contract.

Negotiators for both parties had entered into a tentative agreement for a contract covering the year in question but the Association membership, in a ratification vote, rejected this agreement. The Board implemented said agreement anyway claiming the Association had no right to back out of said agreement, for there was no expressed understanding between the parties to this effect and further the prior contract between the parties denied the Association the right of ratification.

The Hearing Examiner found, however, that members of the Board knew that the Association always had its agreements ratified and there was nothing in the instant negotiations to indicate that this agreement would not be ratified. He further found that the contract clause in question is ambiguous and not controlling. Therefore, the Association had the right to submit the agreement in question to its members for ratification. Accordingly, it was recommended to the Commission that it find the Board had a duty to continue in negotiations after the Association rejected the agreement and that it was an unfair practice for the Board to impose the terms of the agreement upon the unit members.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and conclusions of law.

H.E. No. 78-28

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

In the Matter of

BLACK HORSE PIKE REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-77-232-109

BLACK HORSE PIKE REGIONAL EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Black Horse Pike Regional School District Board of Education
Hyland, Davis & Reberkenny
(William C. Davis, of Counsel)

For the Black Horse Pike Regional Education Association
Goldberg, Simon & Selikoff
(Joel S. Selikoff, of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

The Black Horse Pike Education Association ("Association") brought this action by filing an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") on February 23, 1977. It claimed that the Black Horse Pike Regional School District Board of Education ("Board") committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act ("Act"), specifically N.J.S.A. 34:13A-5.4(a)(1) and (5), [1] by unilaterally imposing a proposed contract on its teachers even though the Association membership had voted to reject said proposed contract.

It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice

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, or refusing to process grievances presented by the majority representative."

of Hearing was issued on April 18, 1977, and a hearing was held before the undersigned in Trenton, New Jersey, on October 11, 12 and 13, 1977. 2/

The parties entered into negotiations in October of 1975. The negotiations continued for over a year and, in October 1976, a memorandum of understanding was signed and entered into between the parties. This memorandum contains no conditions precedent which would limit the power of either the Association or the Board's negotiators to enter into a binding contract. However, both sides' negotiators submitted this document to their principals (i.e., the entire memberships of the Board and the Association, respectively) for ratification. Although the Association membership voted first and rejected the memorandum, the Board ratified it and proceeded to implement its terms.

At the hearing the Association alleged, and introduced evidence to prove, that there was a mutual understanding between the negotiations teams; that any agreement entered into was subject to ratification.

The Board witnesses denied the existence of such an understanding and claimed the entire matter was governed by a specific provision in the then existing contract. The language of this provision was not modified by the memorandum of understanding. Specifically, Article II-C of the contract, entitled "Negotiations," provides,

> "The parties in the course of negotiations shall select their own representatives. The parties mutually pledge their representatives shall be clothed with the appropriate power and authority to make proposals, consider proposals and do all that is necessary and proper for bona fide negotiations; provided, however, that it is understood that no action binding the Board can be taken other than at a public meeting pursuant to a formal vote."

The Association attempted to prove the understanding on the bases of four arguments: (1) The Association's own constitution mandates that all agreements be ratified by the general membership and members of the Board were aware of this constitutional provision; (2) the conduct of the Board after the contract

2/ Both parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Both parties waived their right to submit a brief.

Upon the entire record of this proceeding, I find that the Board is a public employer within the meaning of the Act and is subject to its provisions and that the Association is a public employee representative within the meaning of the Act and is subject to its provisions.

was rejected by the Association demonstrates the Board was aware that the Association signed the agreement subject to ratification; (3) there was an expressed oral agreement at the first negotiations session granting both sides the right of ratification. This agreement was brought up throughout the negotiations including the time when the memorandum of understanding was signed by the parties; (4) on the basis of past history of negotiations between the parties the Board knew that any agreement entered into was always subject to ratification by the Association.

It is noted that In the Matter of Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 44 (1975), the Commission held (under the facts of that particular case) in the absence of expressed qualifying conditions the memorandum of agreement between the parties bound the employer to execute the agreement. In East Brunswick Board of Education, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), the Commission looked beyond the memorandum of agreement to the totality of conduct of the parties in order to determine their apparent authority. Accordingly, the undersigned will do so here.

The Association witnesses testified that Board members were aware of the Association's constitution which prohibits Association negotiators from binding the Association and provides for ratification by the general membership of all proposed settlements. In particular, Alfred Genung, asserted in his testimony that Rex Donnelly, the Assistant Superintendent of School, at one time served on an Association committee, received a copy of the constitution and, accordingly, was aware of its provisions. Donnelly testified for the Board and denied both being on the committee in question and having any specific knowledge of the constitution. The Association did not produce any other evidence demonstrating that Donnelly was a member of this committee and I find Donnelly was credible as to his lack of knowledge of the provisions of the constitution. Accordingly, I find that the Board was not aware of the provisions of the Association's constitution which provided for ratification of all agreements. 3/

3/ It should be emphasized that the controlling factor here is not whether the Association representatives in fact lack the power to bind the association, but rather what was their apparent authority to bind.

After the Board voted to ratify the contract in dispute they proceeded to implement its terms. The Association requested that the parties meet to try to resolve the difficulties between them. The Board acceded to this request. At those meetings the language of various provisions of the memorandum of agreement was discussed and in at least two instances revisions were made. However, no substantive changes were made in the contract language that would reveal a state of mind on the part of the Board members that there was in fact no contract. Similarly, the Board negotiators would not discuss money issues. The Association also introduced letters written by Board officials after the Board's ratification which referred to the ratification process of the Association. The undersigned is satisfied that in both the meetings discussed above and in the letters in question the Board's action could very well have been simply an attempt to avoid controversy. They do not necessarily admit by inference the right of ratification by the Association.

Testimony as to the existence of an expressed oral acknowledgement of the Association's need for ratification is squarely at odds. Gene Sharp, a negotiator for the Association, testified forthrightly that at the October 26 meeting he made it clear to the Board negotiators that any agreement was subject to ratification. Further, during the course of the negotiations and again on the night the memorandum of agreement was signed, Sharp stated that he had to "sell the contract." The other Association witnesses were completely in accord with Sharp. The Board witnesses testified in no uncertain terms there was no such understanding. They admitted at various times Sharp did state he had to "sell the contract," but the witnesses did not believe this meant the agreement was subject to ratification. (It is noted that this expression can simply mean that Sharp wanted to convince the members of the Association that they had a good deal.) The undersigned cannot in good conscience discredit the testimony of either side as to this issue.

To prevail, the Association has to show by a preponderance of the evidence that the Board knew of the Association negotiators' limitation of authority on the basis of past practice. It was undisputed that there were times in the past when the Association negotiators had problems getting the Association members to ratify proposed contracts. On one occasion, apparently for the 1970 contract, a Board member actually spoke to the Association membership concerning

the meaning of a memorandum of agreement in order to convince the Association membership to ratify said agreement. The Board witnesses did not deny that in the past the Association did have such ratification problems. Donnelly testified, however, that he did not know what the Association meant by ratification; that is, who votes for ratification or what the internal consequences of such ratification were. Nelson Downer, chairman of the Board's negotiating team, testified that in prior years the Association had all agreements ratified but since Article II-C was incorporated into the contract, he didn't understand what the Association meant when it talked about ratification. The hearer found the Board witnesses were evasive; they attempted to avoid rather than answer questions about Association ratification. To say that the Board members did not know what the Association meant by ratification is, at best, less than honest. Also, the language of II-C is not controlling here. This language does not speak directly to whether or not the Association representatives could take binding action. Granted, in limiting only the Board representatives' power, an inference might be drawn that the Association representatives' power was not limited, but this is not clear. The language is ambiguous. 4/

It is noted that II-C first went into the contract in 1970. It is not clear from the record whether the issue of ratification ever rose under the language of II-C before, but as Downer admitted the Association continued to use the term "ratification" even after II-C was incorporated into the contract. The Association witnesses testified that they saw no need to express their own right of ratification in the contract for they felt that this was always understood between the parties. This understanding was testified to in such a forthright and open manner that the undersigned finds that this was in fact the Association's understanding. In general, the Association witnesses' testimony on this issue was much more forthright and open and, on balance, the undersigned must discredit the testimony of the Board witnesses and find that the Board members knew that the Association reserved for its members the right

4/ In the Matter of New Brunswick Board of Education, P.E.R.C. No. 78-47, 3 NJPER ___ (1978), the Commission held that, where the contract language is ambiguous in respect to the issue in dispute so that a simple reading of the contract cannot discern the mutual intent of the parties, past practice is admissible to determine the common understanding.

of ratification, and once the contract was rejected the Board had a duty to return to the negotiations table. Accordingly, the undersigned will recommend to the Commission that they find that there is no binding contract between the parties and order that the Black Horse Pike Board of Education negotiate on demand with the Black Horse Pike Regional Education Association for the 1976-77 school year.

RECOMMENDED ORDER

Upon the basis of the foregoing it is recommended that the Black Horse Pike Regional School District Board of Education shall

1. Cease and desist from:

a) Interfering with, restraining or coercing its employees in the rights guaranteed to them by this Act by unilaterally imposing terms and conditions of employment upon its employees.

b) Refusing to negotiate in good faith with a majority representative of its employees concerning terms and conditions of employment for 1975-1976.

2. Take the following affirmative action:

a) Upon demand by the Association negotiate with their representatives concerning the terms and conditions of employment for the 1976-1977 academic year.

b) Post in all school buidings, in a conspicuous place, copies of the attached notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted by the Board immediately upon receipt thereof, after being signed by the Board's representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to its employees are customarily posted.

Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
March 7, 1978

RECOMMENDED POSTING
APPENDIX "A"

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:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of rights guaranteed to them by this Act by unilaterally imposing terms and conditions of employment upon employees.

WE WILL NOT refuse to negotiate in good faith with a majority representative of employees concerning terms and conditions of employment for 1975-1976.

WE WILL, upon demand by the Association, negotiate with their representatives concerning the terms and conditions of employment for the 1976-1977 academic year.

BLACK HORSE PIKE REGIONAL SCHOOL DIST. BD. 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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780