P.E.R.C. NO. 80-144

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MEDFORD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-79-175

MEDFORD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission sustains the refusal of the Director of Unfair Practices to issue a complaint in an unfair practice case. In agreement with the Director, the Commission finds that the subject matter of the charge was fully considered by an arbitrator and that the arbitrator's result was not repugnant to the Act. Accordingly, the decision of the Director to defer to the award of the arbitrator was consistent with the standards established by the Commission in considering whether to reassert jurisdiction over a case previously deferred to arbitration.

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Appearances:

For the Charging Party, Joel S. Selikoff, P.A.
(Joel S. Selikoff of counsel)

For the Respondent, Grotta, Glassman & Hoffman, Esqs.
(Thomas J. Savage of counsel)

DECISION AND ORDER

The Medford Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission on January 10, 1979 alleging that the Medford Board of Education ("Board") was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3.4(a)(1), (2) and (5).

The charge alleges that the President of the Board, at a regular monthly meeting held on October 11, 1978, issued a verbal statement that the Association should remove its chief negotiator because he had misled Association members in negotiations and that the Board might not give members of the Association anything beyond that required by the contract if he were not removed.

In processing the charge, the Commission's Director of Unfair Practices ascertained that the Board was willing to submit this matter to arbitration in accordance with the provisions of the parties' agreement and, on May 7, 1979, he deferred the processing of the charge to arbitration. He also retained jurisdiction of the charge in order to consider a timely application for further consideration upon a showing that, inter alia, the arbitration procedure had reached a result repugnant to the Act.

Thereafter, an arbitrator was appointed who heard the case on November 29, 1979 and who issued his Opinion and Award on January 8, 1980. The arbitrator found that the conduct of the Board president did not violate the parties' contract.[1/] On February 4, 1980, the Association moved to have the Commission resume the processing of the charge on the ground that the arbitrator's award was repugnant to the Act. The motion was supported by a legal memorandum.

1/ Essentially, the arbitrator concluded that the Board had not refused to negotiate with the Association; that the claimed interference with the selection of representatives was too remote in time to be controlling; that the Board had not interfered with the right of employees to form, join or assist an employee organization in a legal matter; that the Board had ratified the newly reached agreement that same night with only the Board president voting against it; that another Board member stated to the meeting--following the Board president's statement--that the Board president did not speak for the entire Board; and that the Board president's so-called threat recognized the duty to honor considerations specified in the parties' contract.

The Director reviewed the opinion and award of the arbitrator and, in a decision issued on March 7, 1980, he refused to issue a complaint, finding that the arbitrator had reached the dispute underlying the Association's charge and that the result was not repugnant to the Act.2/

The Association, by motion and supporting brief received on March 31, 1980, appealed from the Director's decision refusing to issue a complaint. The Association also requested oral argument on this matter. Pursuant to approved requests for extensions of time within which to file, the Board, on April 28, 1980, filed a brief opposing the Association's motion and request for oral argument.

In its brief in support of its motion to appeal, the Association raises several arguments: that the arbitrator, contrary to cited PERC decisions, relied upon the absence of evidence of actual damages to the Association as a result of the Board president's statements; that the statements will be long remembered by the Association as it selects its representatives, thus interfering with its members in their exercise of statutory rights, including the selection of representatives and especially chief negotiator Reilly against whom aspersions have been cast; that the damage to the Association is not so remote as the arbitrator

2/ D.U.P. No. 80-17, 6 NJPER ___ (¶ 1980). See also In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977), for a discussion of the standards to be utilized when the Commission is considering whether to reassert jurisdiction over a case previously deferred to arbitration.

found because, even though the Board had ratified a new, three-year contract with the Association the same night that the disputed statements were made, the parties might have to engage in mid-term negotiations; and that the contractual language relied upon by the arbitrator is distinguishable from that of the Act.

The Board's opposing brief argues that the contractual language relied upon by the arbitrator is similar to the statutory language which forms the basis of this charge, that the cases cited by the Association are factually distinguishable, that the Association failed to meet its burden of proof and that the arbitrator considered the underlying charges and reached a result not repugnant to the Act.

We affirm the Director's refusal to issue a complaint in this matter. The standard for the issuance of a complaint in this type of case has not been met by the Association. In accordance with our deferral policy, it is necessary to determine whether the arbitration procedure led to a result which is repugnant to the Act. If such a result were reached, then a complaint would issue.

The Director reviewed the opinion and award of the arbitrator and determined that the arbitrator reached or considered the underlying unfair practice charge and that the result was not repugnant to the Act. We agree. While it is true, as the Association argues, that the contractual language relied upon by the

Association in asserting a contractual violation is not identical to that contained in the Act, the language closely approximates the statutory provisions which the Association asserts were violated in the unfair practice charge. Thus, we are satisfied that the arbitrator did consider the underlying unfair practice charge.

Our independent review of the entire record convinces us that the arbitrator's findings were supportable by the evidence and were not necessarily inconsistent with our own decisions in similar cases. The Association cites several PERC decisions in which we have found threatening statements to be violative of the Act.[3/] In those cases, the statements were clearly those of the employer or were attributable to the employer as they were made by authorized agents performing their normal duties. In the instant case, the offending comment was made in the immediate aftermath of the Board's ratification of the new three year agreement between the parties by the one Board member who had dissented. Another Board member specifically stated to the meeting that the first Board member was not speaking for the entire Board.[4/] Given the entire factual context of this case [5/] we cannot conclude that the arbitrator's result is repugnant to this Act.

3/ In re City of Hackensack, P.E.R.C. No. 78-71, 4 NJPER 190 (¶4096 1978); In re City of Elizabeth, P.E.R.C. No. 79-93, 5 NJPER 231 (¶10129 1979) and In re Borough of Pine Hill, P.E.R.C. No. 79-98, 5 NJPER 237 (¶10134 1979).
4/ Opinion of Arbitrator, page 10.
5/ See footnote 1, supra.

ORDER

Based upon the above, we sustain the refusal of the Director to issue a complaint in this matter.[6/]

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcells voted for this decision. None opposed. Commissioners Graves, Newbaker and Hipp were not present.

DATED: Trenton, New Jersey
May 20, 1980
ISSUED: May 22, 1980

6/ We deny the Association's request for oral argument. This matter, which is not overly complex, was fully litigated before the arbitrator, and fully briefed before the Commission.