

P.E.R.C. NO. 90-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOBOKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-90-46

HOBOKEN TEACHERS ASSOCIATION,

Charging Party,

-and-

EXECUTIVE COMMITTEE OF THE
HOBOKEN TEACHERS ASSOCIATION,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Hoboken Teachers Association against the Hoboken Board of Education. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act when it unilaterally rescinded a memorandum of agreement it had executed and ratified. The Commission finds that the Association's Executive Committee notified the Board that it had set aside the Association's ratification vote "due to possible irregularities." Based on that notification, the Board likewise rescinded its ratification. The Commission concludes that the Board had sufficient reasons to believe that the Executive Committee was the officially designated representative of the Hoboken Teachers Association and therefore did not violate its duty to negotiate in good faith by rescinding its ratification vote.

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Appearances:

For the Respondent, Murray, Murray & Corrigan
(Robert E. Murray, of counsel; David F. Corrigan, on the brief)

For the Charging Party, Vincent Germinario

For the Intervenor, Zazzali, Zazzali, Fagella & Nowak
(James R. Zazzali, of counsel)

DECISION AND ORDER

On August 15, 1989, the Hoboken Teachers Association filed an unfair practice charge against the Hoboken Board of Education. The charge alleges 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) and (5),^{1/} when, on July 18, 1989, it

^{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...."

unilaterally rescinded a memorandum of agreement it had executed on June 16, 1989 and ratified on June 29, 1989.

On September 6, 1989, a Complaint and Notice of Hearing issued. On September 18, the Board filed its Answer. It admits that on June 29 it voted in favor of a new agreement but denies that the Association ratified an agreement on June 29. It claims that an earlier version of the memorandum of agreement was soundly rejected by the Association's membership and that the Association's president held an illegal meeting on June 29 to approve a new agreement. The Board also admits that on July 18 it voted to rescind its June 29 vote. It claims that the Association's leadership advised the Board that the Association had not approved a new agreement, that any vote had been rejected and that the president had been removed from office. As affirmative defenses, the Board asserts that since the Association never legally ratified the memorandum of agreement, the Board was free to rescind its June 29 vote; the Board acted in response to a request by the Association's leadership; the Association has not authorized this unfair practice charge but has instead demanded a continuation of negotiations; there was no tentative agreement; and the charge fails to state a claim for which relief can be granted.

On October 6, 1989, Hearing Examiner Stuart Reichman granted a motion to intervene filed by the Executive Committee of the Hoboken Teachers Association. On October 23, the intervenor

moved for summary judgment. On November 6, the charging party filed a reply.^{2/}

On November 15, 1989, the Board moved for summary judgment. On November 20, the charging party filed a reply. The Chairman stayed proceedings pending disposition of the motions.

Following are the undisputed material facts:

1. The collective negotiations agreement between the Board and the Hoboken Teachers Association expired on June 30, 1989. On June 16, 1989, the parties reached a tentative agreement on a successor contract. On June 20, the Association's membership rejected the tentative settlement by a vote of 158-120. Association President Vincent Germinario supported ratification.

2. During the week of June 26, 1989, two modifications were made in the tentative agreement. On June 29, the Board ratified the modified memorandum of agreement. Later that day, a special meeting of the Association was called at which the modified memorandum was ratified. Building representatives and the general membership were not invited. The Association's by-laws provide that the president may call special meetings and that when 25 Association

^{2/} Attorney Arnold M. Mellk filed the charge on the Association's behalf. On September 28, 1989, New Jersey Education Association President Betty Kraemer informed Mellk that the Hoboken Teachers Association's Executive Committee had authorized withdrawal of the charge and that his services were no longer needed. Association President Vincent Germinario has continued to process the charge.

members make a written request, the president must call a special meeting.

3. On July 18, 1989, the Executive Committee notified the Board that it had voted to set aside the Association's June 29 ratification vote "due to possible irregularities." Based on that fact, the Board voted to rescind its ratification.

4. On July 25, 1989, the Executive Committee voted to request Germinario's resignation as president "due to the possible irregularities which took place at the ratification vote of June 29, 1989." The Executive Committee also informed the Board that the Committee had voted to remove Germinario as the Association's spokesperson.

5. On August 11, 1989, the Executive Committee notified the Commission that the Association's president had filed or would be filing an unfair practice charge and that the Executive Committee sought to intervene.

6. On August 15, 1989, attorney Mellk filed this unfair practice charge on the Association's behalf.

7. On September 22, 1989, the National Education Association ("NEA") and the New Jersey Education Association ("NJEA") notified the Executive Committee and President Germinario that almost 90% of the Association's dues-paying members had signed a petition asking the NJEA to help resolve the internal dispute. The NJEA and the NEA conducted research, meetings and an investigation. They concluded that: a September 1989 election of

Association building representatives was valid; the Executive Committee was the Association's lawful governing authority; notice of the June 29 ratification meeting was improper and therefore the vote was null and void; and the dispute as to the Board's right to rescind its June 29 ratification is moot.

8. On September 26, 1989, the Executive Committee concurred with the conclusions of the NJEA and NEA. It declared invalid the June 29 ratification vote; declared valid the September 1989 election of Association building representatives; assumed control of all Association matters relating to collective negotiations and contract administration; designated spokespersons and directed them to reopen negotiations and to withdraw this charge; and took other steps relating to the control of Association funds.

We first consider the Board's motion. Summary judgment is appropriate:

[i]f it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law....[N.J.A.C. 19:14-4.8(d)]

See also Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75

(1954). A motion for summary judgment is to be granted with extreme caution, the moving papers are to be considered in the light most favorable to the party opposing the motion, all doubts are to be resolved against the movant and the summary judgment procedure is

not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); Essex Cty. Educ. Services Comm'n, P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982).

We are reluctant to intercede in what is predominantly an intra-union dispute. See City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982). We do so here only to the extent necessary to determine whether the Board violated the Act when it rescinded its ratification of the memorandum of agreement.

On July 18, 1989, the Association's Executive Committee notified the Board that it had set aside the June 29 ratification vote "due to possible irregularities." Based on that notification, the Board likewise rescinded its ratification. Subsequently, an overwhelming majority of Association members petitioned the NJEA for intervention to resolve the internal organizational dispute. The NJEA and NEA investigated and then ratified the Executive Committee's actions.

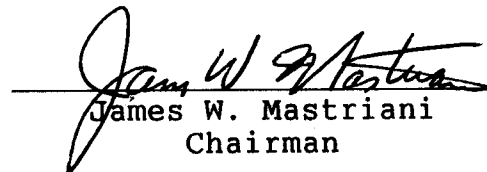
Under all these facts, we grant the Board's motion for summary judgment. We need not resolve what person or body speaks for the Association. That is an internal matter best resolved through internal means. We need only examine the Board's conduct in light of the circumstances it faced. Under those circumstances we find that it did not violate its duty to negotiate in good faith by rescinding its ratification vote. Cf. Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34 (¶15020 1983) (no violation where employer reasonably believed it was dealing with duly authorized representatives of union); Essex Cty. College P.E.R.C. No. 87-81, 13

NJPER 75 (¶18034 1986) (Commission considered series of factors including membership vote to determine what entity spoke for majority representative). Contrast Matawan-Aberdeen Reg. Sch. Dist., P.E.R.C. No. 89-130, 15 NJPER 411 (¶20168 1989) (violation for direct dealing despite awareness of officially designated representative). The Board had sufficient reasons to believe that the Executive Committee was the officially designated representative of the Hoboken Teachers Association. Accordingly, the Complaint is dismissed.^{3/}

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Johnson, Smith and Ruggiero voted in favor of this decision. None opposed. Commissioners Reid and Bertolino abstained.

DATED: Trenton, New Jersey
December 14, 1989
ISSUED: December 15, 1989

^{3/} In light of this determination, we need not address the Executive Committee's motion seeking withdrawal of the unfair practice charge or its summary judgment motion.