

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BRUNSWICK TOWNSHIP BOARD OF  
EDUCATION,

Respondent,

-and-

Docket No. CO-80-254-70

NORTH BRUNSWICK TOWNSHIP EDUCATION  
ASSOCIATION,

Charging Party.

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NORTH BRUNSWICK TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent,

-and-

Docket No. CE-80-19-71

NORTH BRUNSWICK TOWNSHIP BOARD OF  
EDUCATION,

Charging Party.

SYNOPSIS

In considering unfair practice charges filed by both the Board and the Education Association, the Commission, based on a stipulation of facts, concludes that the Education Association did not engage in improper coalition negotiations. Accordingly, the complaint against the Education Association is dismissed in its entirety. The Commission further concludes that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when it refused to negotiate with the negotiating team selected by the Education Association, due to the inclusion of members from those associations which represent other units of the Board's employees. However, that section of the complaint which alleges that the Board has violated section (a)(2) is dismissed.

As a remedy, the Board is ordered to negotiate with the negotiating representatives selected by the Education Association concerning the terms and conditions of employment for employees in the unit represented by the Association, regardless of whether the negotiating representatives it selects include members from other associations which represent other units of the Board's employees. However, the Association and its representatives may not: 1) demand that the Board also negotiate with regard to contracts covering the terms and conditions of employment for employees in additional units represented by the other association; 2) demand

that any settlement for its unit must also apply to these other units; 3) condition its agreement on the Board's offering of identical terms to these other units; and 4) condition its agreement on the Board's settling of contracts with these other units.

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Charging Party.

Appearances:

For the Board, Green, Koenig & Dzwilewski, Esqs.  
(Mr. Allan P. Dzwilewski, of Counsel)  
For the Education Association, Stephen E. Klausner, Esq.

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on February 14, 1980 by the North Brunswick Township Education Association (the "Association") alleging that the North Brunswick Township Board of Education (the "Board") engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, the Education Association alleges that after it designated a negotiating team including members of the teachers' unit, a professional negotiator and other Board employees, the Board, in

violation of N.J.S.A. 34:13A-5.4(a)(1), (2) and (5),<sup>1/</sup> objected to the makeup of this negotiating team and refused to negotiate with the Association until the members of the other negotiations units were removed from its negotiating team, either as members or observers. On the same date, the Board filed an Unfair Practice Charge against the Association alleging that, after the Association had filed a representation petition to include all certified and non-certified employees in its unit, and after the Board had filed a representation petition for two separate units of certified and non-certified employees, the Association, prior to Commission resolution of these conflicting representation petitions, include as part of its negotiating team representatives from the Secretarial, Custodial, Special Services and Aides units. The Board further alleges that the Association, by insisting on the inclusion of representatives from these other units in its negotiating team, is refusing to negotiate in good faith, destroying the integrity of these other majority representatives, imposing on the Board the unit composition requested in its representation petition, and undermining negotiations between the Board and these various employee negotiations units, all in violation of N.J.S.A. 34:13A-5.4(b)

1/ These subsections provide that employers, their representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

(1) and (3).<sup>2/</sup>

It appearing that the allegations of both Unfair Practice Charges, if true, may constitute unfair practices within the meaning of the Act, Complaints and an Order Consolidating Cases was issued on March 7, 1980. Thereafter, the parties, pursuant to N.J.A.C. 19:14-6.7, agreed to a stipulation of facts in this matter and waived a Hearing Examiner's Recommended Report and Decision. A timetable for the submission of briefs was established and this matter was thereafter transferred to the Commission. The Board and the Association submitted briefs on March 7 and March 11, 1980, respectively.

The parties agreed to stipulations of facts,<sup>3/</sup> a conformed copy of which is attached hereto and made a part hereof as Appendix A.

The Association, in support of its charge, argues that since the Act guarantees employees a free choice to select whomever they wish to represent them in collective negotiations, the Board has violated section (a)(5) by refusing to negotiate with the duly

<sup>2/</sup> These subsections provide that employee organizations, their representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

<sup>3/</sup> Since the parties have agreed to stipulations of fact, the issue in dispute is purely legal. The parties both having submitted briefs on this issue, the Commission concludes that oral argument, requested by the Association, would not significantly enhance its understanding of this legal issue. Further, the Board has formally objected to oral argument on the basis that the matter is adequately handled by the stipulation of fact and supporting briefs. The Commission, being in agreement with the Board's objection, denies the Association's request for oral argument.

designated negotiating team which it selected. The Association further contends that it is not attempting to destroy the integrity of the other negotiations units. Although the negotiating teams for each unit were composed of members of other units, the Association argues that there is no allegation that at the negotiations for its unit it attempted to also negotiate concerning the terms and conditions of employment for the employees in any of these other units.

The Board, in support of its charge, contends that the Association has committed unfair practices by attempting, through joint negotiating teams and common demands, to consolidate with other certified units during the pendency of conflicting representation petitions, thereby imposing improper coalition negotiations. The Board further argues that the over-all conduct of the Association, as stated in the stipulation of facts, constitutes bad faith negotiations.

N.J.S.A. 34:13A-5.3 states that:

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this Act shall be the exclusive representative for collective negotiations concerning the terms and conditions of employment of the employees in such unit ... and ... A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit.

N.J.S.A. 34:13A-6 grants the Commission the authority to:

...decide in each instance which unit of employees is appropriate for collective negotiation...

It is clear from these explicit provisions of the Act that the Board's only obligation is to negotiate with those negotiations units which it has recognized or which have been found appropriate by the Commission. Similarly, under these sections, an employee organization has the authority and obligation to negotiate only for the unit which it represents.

It is well established that parties may voluntarily agree to consolidate or merge separate units for the purpose of collective negotiations. However absent voluntary agreement, neither party may attempt to force upon the other an enlargement or merger of existing units. The Board may lawfully insist on confining negotiations within the parameters of the existing units, i.e., require that each association negotiate solely on behalf of the employees in the unit which it represents. This rule is based on the rationale that, once an appropriate unit has been recognized or certified, the statutory interest in maintaining stability and certainty in the negotiations structure requires adherence to existing unit definitions. Accordingly, during negotiations for the Association's unit, its negotiating representatives: 1) could not demand that the Board also negotiate with regard to contracts covering the terms and conditions of employment for employees in additional units represented by other associations; 2) could not demand that any settlement for its unit must also apply to these other units; 3) could not condition its agreement on the Board's offering of identical terms to these other units; and 4) could not condition its agreement on the Board's settling of contracts with these other units.

Douds v. International Longshoremen's Assn., 241 F.2d 278; American Radiator and Standard Sanitary Corp. v. NLRB, 381 F.2d 632; Publishers Assn. v. NLRB, 364 F.2d 293; AFL-CIO Joint Negotiating Committee, Phelps Dodge Corp., 74 LRRM 1705; Shell Oil Co., 79 LRRM 1133; Utility Workers, Ohio Power Co., 83 LRRM 1099, aff'd, 85 LRRM 2944; O.C.A.W. v. NLRB, 84 LRRM 2581; Independent Drugstore Owners of Santa Clara County, 69 LRRM 1031.

On the other hand, uniformity of working standards including common expiration dates are legitimate aims of associations. In furtherance of their goal for uniform contracts, associations may consult to prepare a list of common demands, and they may coordinate their negotiations strategies through interlocking or joint negotiating teams, which include members from all of the various employee units. Each of the associations, through its interlocking negotiations team, may then simultaneously, but separately, attempt to negotiate such a common contract for the employees in the unit which it represents. AFL-CIO Joint Negotiating Committee for Phelps Dodge v. NLRB, 470 F.2d 722; Utility Workers, Ohio Power Co., supra; General Electric v. NLRB, 412 F.2d 512; Standard Oil Co. v. NLRB, 50 LRRM 1238, aff'd, 322 F.2d 40; Minnesota Mining and Manufacturing Company v. NLRB, 415 F.2d 174.

Accordingly, the Association could lawfully agree on common negotiating demands with the Secretarial, Custodial, Special Services and Aides units, could coordinate negotiating strategies, and could establish joint or interlocking negotiating teams with these other units. Thus, each one of the five associations may be represented by a negotiating team which includes members from all the other



associations.<sup>4/</sup> During negotiations for the Education Association, its joint negotiating team can demand that the Board agree to certain terms for the employees in its unit; while, for example, during separate negotiations for the Custodial and Maintenance Association, its joint negotiating team can make the same demands for the employees in its unit as appropriate.

It is apparent from the stipulated facts that the Education Association has not attempted to engage in any of the four types of improper coalition negotiations previously enumerated. Rather, it is clear that the Education Association's method of negotiating, as stated in stipulations #24 through #39, is within the permissible negotiations boundaries discussed above. Accordingly, the Education Association has not engaged in any unfair practice and, therefore, the Complaint against it is dismissed in its entirety. However, the Board has violated sections (a)(1) and (5) by refusing to negotiate with the negotiating team selected by the Education Association, due to the inclusion of members from those associations which represent other units of the Board's employees.<sup>5/</sup>

With regard to the Board's alleged violation of section

<sup>4/</sup> This conclusion is further supported by N.J. Constitution, Article 1, Para 19 (1949) and N.J.S.A. 34:13A-5.3 which grant to public employees the right to representatives of their own choice for purposes of collective negotiations.

<sup>5/</sup> The Commission's conclusion in this regard is not affected by the current pendency of conflicting Board and Education Association representation petitions, either one of which will result in an alteration of the current unit structure. Until the Commission rules on these petitions, the Board, in accordance with the guidelines established herein, is required to negotiate with the units as they currently exist. In addition, the Commission notes that this decision does not in any manner affect the final resolution of these representation petitions.

(a)(2), the Education Association has not presented any additional facts to support this allegation, other than the Board's refusing to negotiate with its chosen representatives. While the Board's conduct does, in a sense, "interfere" with the Education Association's ability to collectively negotiate, it does not constitute pervasive employer control or manipulation of the employee organization itself, which is the type of activity prohibited by section (a)(2). Duquesne University, 81 LRRM 1091, Graham Ford, Inc., 89 LRRM 1796, Spiegel Trucking Co., 92 LRRM 1604, Kurz-Kasch, Inc., 100 LRRM 1118. Therefore, that section of the Complaint which alleges that the Board has violated section (a)(2) is dismissed.

#### ORDER

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

1. Cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the negotiating representatives selected by the Education Association concerning terms and conditions of employment for those employees in the unit it represents.

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

- (a) Upon demand by the Education Association, negotiate with its selected negotiating representatives concerning the terms and conditions of employment for those employees in the unit

it represents, regardless of whether the negotiating representatives it selects include members from the associations which represent other units of the Board's employees, provided that, during negotiations for the Education Association, its negotiating representatives

(1) do not demand that the Board also negotiate with regard to contracts covering the terms and conditions of employment for employees in additional units represented by the other associations;

(2) do not demand that any settlement for its unit must also apply to these other units;

(3) do not condition its agreement on the Board's offering of identical terms to these other units; and


(4) do not condition its agreement on the Board's settling of contracts with these other units.

3. Post in all schools and locations where notices are normally given to employees, copies of the attached notice marked "Appendix B". Copies of such notice, on forms provided by the Commission, shall, after being signed by the Board's representative, be posted by the Board immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by any other material.

4. Notify the Chairman of the Commission, in writing, within twenty (20) days from the date of receipt of this Decision and Order what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the section of the Complaint in Docket No. CO-80-254-70, which alleges that the Board violated N.J.S.A. 34:13A-5.4(a)(2), and all sections of the Complaint in Docket No. CE-80-19-71 be dismissed.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett, Parcels and Graves voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed.

DATED: Trenton, New Jersey  
April 3, 1980  
ISSUED: April 7, 1980

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In the Matter of -  
 -  
 NORTH BRUNSWICK TOWNSHIP -  
 BOARD OF EDUCATION -  
 -  
 -and- -  
 -  
 NORTH BRUNSWICK TOWNSHIP -  
 EDUCATION ASSOCIATION -

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DOCKET NOS. CO-80-254  
 CE-80-19

STIPULATIONS OF FACTS

1. The North Brunswick Township Board of Education is a public employer within the meaning of the Act and is subject to its provisions and is the employer of the employees in this matter.
2. The North Brunswick Township Education Association is an employee organization within the meaning of the Act and is subject to its provisions.
3. The Education Association currently represents the unit of classroom teachers, media specialists, speech therapists, child development specialists, guidance personnel, coaches, nurses, specialists, head teachers, and athletic trainer. A copy of the most recent contract is attached and made a part hereof.
4. The North Brunswick Custodial and Maintenance Association is an employee organization within the meaning of the Act and is subject to its provisions.
5. The Custodial and Maintenance Association currently represents the unit of head custodians and shift leaders, school custodians, maintenance men, groundsman, and custodian-drivers. A copy of the most recent contract is attached and made a part hereof.
6. The North Brunswick Educational Secretaries Association is an employee organization within the meaning of the Act and is subject to its provisions.
7. The Educational Secretaries Association currently represents a unit of secretaries, clerks, attendance officer, computer operator/keypuncher, keypunch operator, transportation coordinator, and computer operator. A copy of the most recent contract is attached and made a part hereof.
8. The North Brunswick Special Services Association is an employee organization within the meaning of the Act and is subject to its provisions.
9. The Special Services Association currently represents a unit of psychologists, social workers, and learning disability teacher-consultants. A copy of the most recent contract is attached and made a part hereof.
10. The North Brunswick School Aides Association is an employee organization within the meaning of the Act and is subject to its provisions.
11. The School Aides Association currently represents a unit of high school aides. A copy of the most recent contract is attached and made a part hereof.

12. The North Brunswick Cafeteria Staff is an employee organization within the meaning of the Act and is subject to its provisions.

13. The Cafeteria Staff currently represents a unit of clerk typist, cook manager, cook, food service worker-general, and food service worker-cashier. A copy of the most recent contract is attached and made a part hereof.

14. The North Brunswick Education Association, Custodial and Maintenance Association, Special Services Association, and School Aides Association are affiliated with the New Jersey Education Association.

15. A Clarification of Unit Petition was filed by the Education Association on October 5, 1979 (Docket No. CU-80-26).

16. On October 12, 1979, a Petition for Certification of Public Employee Representative was filed by the Board of Education (Docket No. RE-80-4).

17. On October 15, 1979, a Petition for Certification of Public Employee Representative was filed by the Education Association (Docket No. RO-80-76).

18. On January 9, 1980, the Petition docketed as RO-80-76 was amended by the Education Association to include cafeteria workers.

19. On November 5, 1979 and February 14, 1980, informal conferences were held on these Representation Petitions.

20. There was no voluntary resolution of these Petitions.

21. These matters are still pending before the Commission.

22. Summarizing the RE Petition, the position of the Board is that the unit configuration should be as follows: Unit A - All professional employees. Unit B - All nonprofessional employees.

23. Summarizing the RO Petition, the position of the Education Association is that there should be one unit of all professional and nonprofessional employees.

24. The Education Association on November 26, 1979, Custodial and Maintenance Association on November 26, 1979, the Special Services Association on December 4, 1979 and the Educational Secretaries Association on November 30, 1979 filed Requests to Commence Negotiations for successor agreements. These agreements to commence effective July 1, 1980.

25. On October 22, 1979, the first negotiation session between the negotiating teams of the Board and the Education Association was held. The Education Association, for the first time, included as part of its negotiating team at least one secretary, one custodian, one special services teacher, and one aide.

26. The Board objected to these aforementioned people on the grounds that: 1) the pendency of the RO and RE Petitions, and 2) the undermining of the negotiations with the various other units.

27. This session was held in conformity with Article 2B of the collective negotiations agreement.

28. On December 17, 1979, the second negotiating session was held. At this session only teachers were present.

29. At this meeting, the Board presented its proposal to the Education Association.

30. On February 4, 1980, a third negotiating session was held. The Education Association included as part of its negotiating team at least one secretary, one custodian, one special services teacher, and one aide.

31. No negotiations took place due to the Board's objection to the composition of the negotiating team of the Education Association.

32. By letter dated February 6, 1980, the Board stated its objections in writing to the Education Association. (A copy of that letter was attached to the Unfair Practice Charge docketed RE-80-19 and is made part hereof).

33. On February 11, 1980, the fourth negotiating session was held. The Education Association included as part of its negotiating team at least one secretary, one custodian, one special services teacher, and one aide.

34. No negotiations took place due to the Board's objection to the composition of the negotiating team of the Education Association.

35. On February 14, 1980, the Board and the Education Association each filed Unfair Practice Charges. (Docket Nos. CE-80-19 and CO-80-254, respectively).

36. On February 28, 1980 the first negotiating session between the Board and the Custodian and Maintenance Association was held. The Custodian and Maintenance Association, for the first time, included as part of its negotiating team at least one teacher, one secretary, one special services teacher, and one aide.

37. The Board objected to the presence of these aforementioned people.

38. The attorney for the Education Association, the Custodian and Maintenance Association, the Educational Secretaries Association, the Special Services Association, and the School Aides Association represents that negotiating teams for each unit, for the first time, will be composed of at least one teacher, one secretary, one special services teacher, one custodian, and one aide.

39. The attorney for these five units represents that the contract proposals by the five separate Associations will contain identical language, where applicable, and will be made consistent with the language currently contained, or to be contained, in the Education Association agreement.

40. A first negotiations session between the Board and the Educational Secretaries Association is set for March 20, 1980.

41. No date has been set for the first negotiations session between the Board and the Special Services Association. The Special Services Association has requested that the date be set for negotiations.

42. The parties agree that any decision rendered by the Commission with respect to these pending Unfair Practice Charges filed by the Board and the Association

will be final and binding on the Education Association, the Special Services Association, the Educational Secretaries Association, the School Aides Association, and the Custodian and Maintenance Association and the Board.

43. Each party agrees to the use of this Stipulation of Fact as its answer to the respective Unfair Practice Charge filed.

44. The parties further stipulate that pursuant to Section 19:14-6.7 of the Commission's Rules the parties agree to waive an evidentiary hearing in the above-entitled matter and further agree to waive an intermediate Hearing Examiner's Report. This matter will be the subject of a Commission decision based on the formal pleadings, the Stipulation of Facts and briefs to be submitted by the parties concerning their respective legal contentions.

/s/ Allan P. Dzwilewski      2/29/80  
For the Board of Education      Date

/s/ Stephen E. Klausner      2/29/80  
For the Education Association      Date

/s/ Bruce D. Leder      2/29/80  
For the Commission      Date



# 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 SHALL cease and desist from interfering with, restraining and coercing our employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the negotiating representatives selected by the Education Association concerning terms and conditions of employment for the employees in the unit it represents.

WE SHALL, upon demand by the Education Association, negotiate with its selected negotiating representatives concerning the terms and conditions of employment for those employees in the unit it represents, regardless of whether the negotiating representatives it selects includes members from the associations which represent other units of the Board's employees; provided that, during negotiations for the Education Association's unit, its negotiating representatives: 1) do not demand that the Board also negotiate with regard to contracts covering the terms and conditions of employment for employees in additional units represented by the other associations; 2) do not demand that any settlement for its unit must also apply to these other units; 3) do not condition its agreement on the Board's offering of identical terms to these other units; and 4) do not condition its agreement on the Board's settling of contracts with these other units.

NORTH BRUNSWICK TOWNSHIP 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, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.