

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP EDUCATION
ASSOCIATION,

Respondent,

Docket No. CO-78-105-63

-and-

HAMILTON TOWNSHIP SCHOOL SOCIAL
WORKERS ASSOCIATION,

Charging Party.

SYNOPSIS

An unfair practice charge was filed by the Hamilton Township Social Workers Association against the Hamilton Township Education Association alleging that the Education Association had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act. Specifically, the Social Workers Association alleged that the Education Association, the majority representative of certain employees employed by the Board of Education including the social workers, failed to fairly represent the interests of the social workers during the course of negotiations for an agreement covering the period between July 1, 1977 and June 30, 1980.

The Hearing Examiner, finding that the Education Association had not breached its statutory duty of fair representation of the social workers in the negotiations that led to that agreement, recommended that the complaint be dismissed. Exceptions to the Hearing Examiner's Recommended Report and Decision were filed by the Social Workers Association.

After reviewing the entire record including the exceptions and supporting brief which were filed by the Association, the Commission, in agreement with the Hearing Examiner, concluded that the Education Association had fully met its statutory duty with respect to representing the social workers who were members of the negotiating unit represented by the Education Association. Accordingly, the Commission dismissed the complaint against the Education Association in its entirety.

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Docket No. CO-78-105-63

HAMILTON TOWNSHIP SCHOOL SOCIAL
WORKERS ASSOCIATION,

Charging Party.

Appearances:

For the Hamilton Twp. Education Assn.
(Joel S. Selikoff, Esq.)

For the Hamilton Twp. School Social
Workers Association
Dietrich, Allen & St. John, Esqs.
(Charles P. Allen, Jr., Esq.)

DECISION AND ORDER

On November 18, 1977 an Unfair Practice Charge was filed with the Public Employment Relations Commission by the Hamilton Township School Social Workers Association (the "Social Workers"), which was amended on January 4, 1978, alleging that the Hamilton Township Education Association (the "Association") 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. (the "Act"). More specifically, the Social Workers alleged that the Association, which is the collective negotiations representative, inter alia of the social workers, failed to fairly represent the interests of the social

workers within the negotiations unit during the course of negotiations for the present July 1, 1977 through June 30, 1980 contract which commenced in July, 1976 and which were concluded on or about September 27, 1977, in violation of N.J.S.A. 34:13A-5.4 (b) (1) and (3).^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 28, 1978. Hearings were held on May 4 and May 5, 1978 in Trenton, New Jersey before Alan R. Howe, Hearing Examiner of the Commission, at which time both parties were represented by counsel and were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. Subsequent to the close of the hearings the parties submitted post-hearing briefs, all of which were filed by August 11, 1978.

On August 21, 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

^{1/} These subsections prohibit employee organizations, 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) 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. The Association's Motion to Dismiss that portion of the Complaint alleging a violation of N.J.S.A. 34:13A-5.4(b)(3) was granted by the Hearing Examiner on May 3, 1978. This ruling was not appealed by the Social Workers.

^{2/} H.E. No. 79-10, 4 NJPER 381 (¶4171 1978).

upon the parties. A copy of this Report is attached to this decision and made a part hereof. Exceptions and a supporting brief were filed by the Social Workers on September 5, 1978. The Association on September 21, 1978 filed a brief in answer to the Social Workers' exceptions.

The Hearing Examiner recommended that the Commission dismiss charges of unfair practices filed by the Social Workers against the Association. The Hearing Examiner specifically found that the Education Association had not breached its statutory duty of fair representation in the negotiations that led to the current collective negotiations agreement between the Hamilton Township Board of Education (the "Board") and the Association. It had been the position of the Social Workers that the Association should have pressed further with the Board the proposal of the Social Workers that they receive parity in pay with the school psychologists. The Hearing Examiner determined that the Association did press in negotiations the "parity issue" and later accepted a proposal of the Board that the Social Workers be moved on the salary guide, where appropriate, from the "MA" column to the "MA plus 30" column. In addition the Social Workers would also receive the same across the board increase negotiated for all the members of the negotiations unit.

The Hearing Examiner relied upon several United States Supreme Court decisions ^{3/} and pertinent public sector

^{3/} Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971); Vaca v. Sipes, 386 U.S. 171 (1967); Humphrey v. Moore, 375 U.S. 335 (1963); and Ford Motor Company v. Huffman, 345 U.S. 330 (1953).

decisions ^{4/} in concluding that the Association had fully and fairly represented the interests of the Social Workers in negotiations. In part the Hearing Examiner noted that the Association through negotiations with the Board not only obtained the same across-the-board increase for the social workers as negotiated for all the other members of the negotiations unit but also negotiated the placement of social workers on the "MA plus 30" column of the teachers' salary guide when they had been placed on the "MA" guide in past years, with an attendant additional increase in their salaries. This position had been deemed to be minimally acceptable by the Social Workers. The Hearing Examiner also emphasized that the Social Workers were offered the opportunity as early as December 1976 to have a resource person present at any negotiations sessions that concerned the terms and conditions of employment of the social workers in the negotiations unit. In fact, it was noted, the Social Workers did not avail themselves of this opportunity until May, 1977, but thereafter designated a representative, John Griffiths, to act as a resource person during the course of collective negotiations and to articulate the interests of the Social Workers in negotiations. The Hearing Examiner further concluded that the

4/ Belen v. Woodbridge Township Board of Education, 142 N.J. Super. 486 (App. Div. 1976); McGrail v. Detroit Federation of Teachers, 82 LRRM 2623 (Mich. Cir. Ct. 1973); In re Union County Board of Chosen Freeholders, E.D. No. 49 (1974); In re Jefferson Township Board of Education, P.E.R.C. No. 61 (1971).

mere fact that the Social Workers were dissatisfied with the outcome of negotiations did not result in a violation of the duty of fair representation.

The Social Workers in their exceptions to the Hearing Examiner's Recommended Report and Decision maintain that the Association evinced hostility toward the seven social workers within the negotiating unit as reflected by certain letters and comments of some Association leaders. It is contended that as a result of this hostility the Association discriminated against the Social Workers by rejecting their primary salary proposals "out of hand" without discussing these proposals further with the Social Workers; by publishing the Social Workers "bottom line" concerning their salary demands in a pamphlet entitled "H.T.E.A. Proposal Highlights" without so informing the Social Workers; and by failing to represent the Social Workers interests fairly in negotiations with the Board. The Social Workers emphasized that although the salary proposals of other sub-groups within the negotiating unit were also modified by the Association this was done only after negotiations with the Board representatives. The Social Workers contend that in sharp contrast to its actions vis-a-vis other sub-groups the Association never seriously attempted to advance the proposals of the Social Workers during the course of negotiations with the Board but arbitrarily rejected certain of the proposals, including all but one of the salary demands, without even discussions with the Social Workers concerning their

intentions in that regard. The Social Workers also asserted that the Hearing Examiner chose to ignore the facts presented by them and chose only to cite those sections of the record that supported his conclusions of law without commenting on conflicting evidence proffered by the Social Workers. The Social Workers submit that the only possible way to remedy the unfair practices committed by the Association would be to order the severance of the social workers from the unit represented by the Association coupled with the simultaneous certification of the Social Workers as its own bargaining agent.

The Association asserts that it acted in a manner that was completely consistent with the duty of fair representation as that duty has been defined in numerous judicial decisions. The Association maintains that the record reflects no arbitrary, discriminatory, hostile or capricious actions directed at the Social Workers by the Association. The Association emphasizes that no pertinent decisions mandate that a majority representative must advance and advocate all proposals of both individuals or sub-groups relating to the negotiations process, contrary to the Social Workers contentions. The Association insists that it has the right, and in fact the obligation, to filter out and reject proposals proffered by particular groups of employees which it in good faith believes cannot be successfully pursued at the negotiations table. The Association points out that the record establishes that it was able to obtain additional salary benefits

for at least certain of the Social Workers -- beyond the across the board increases negotiated for all unit members -- by negotiating a provision wherein all social workers holding a M.S.W. degree were placed on the "MA Plus 30" column of the existing teachers' salary guide instead of remaining on the Masters guide. In addition the Association argues that it provided the Social Workers opportunities to advance, explain and document their proposals; adjusted its original negotiations position vis-a-vis the Social Workers to alleviate certain of the concerns of the Social Workers, and permitted the Social Workers to designate a resource person to sit in on negotiations affecting Social workers and to press their position during the negotiations process with the Board. In light of the above, the Association maintains that the Hearing Examiner's Recommended Report and Decision should be adopted by the Commission and that the Complaint filed by the Social Workers should be dismissed in its entirety.

After careful consideration of the entire record in this matter the Commission concludes, substantially for the reasons cited by the Hearing Examiner, that the Association did not violate N.J.S.A. 34:13A-5.4(b)(1) in representing the interests of the Social Workers in contract negotiations with the Board that resulted in the execution of an agreement that covers the period between July 1, 1977 and June 30, 1980.

The case law relating to allegations of the lack of fair representation, specifically concerning the negotiating of a contract, essentially affirms that a majority representative

should have broad discretion in negotiating contracts and weighing the advantages and disadvantages of different proposals submitted by unit members. Judicial decisions in both the private and public sector have consistently determined that a wide range of reasonableness must be allowed a certified or recognized majority representative who may accept and reject proposals and comments of unit members or sub-groups, subject to complete good faith and honesty of purpose in the exercise of its discretion.^{5/}

Moreover, pertinent public sector decisions cited by both parties stand for the general proposition that a negotiated agreement that results in a detriment to one group of employees as opposed to other unit members, i.e. a lesser salary increase than other employees or a longer work day than others, does not establish a breach of duty on the part of the majority representative. Absent clear evidence of bad faith or fraud unions have been permitted to make temporary compromises that may adversely affect certain members of a negotiations unit for the benefit of all unit members or a majority of these individuals.^{6/} In the McGrail decision, supra, an employee instituted a class action on behalf of two sub-groups included within the negotiations unit represented by the Detroit Federation of Teachers, specifically two classes of emergency substitutes regularly employed by the Board of Education. It was alleged that the Federation had breached

^{5/} See Ford Motor Company v. Huffman, supra. and McGrail v. Detroit Federation of Teachers, supra.

^{6/} See Belén v. Woodbridge Township Board of Education, supra. and McGrail v. Detroit Federation of Teachers, supra.

its duty of fair representation when it negotiated a contract with the Board providing pay raises for all teachers employed by the Board, except for the aforementioned two classes of emergency substitutes. The Court in that matter concluded that at most the facts indicated that the Federation of Teachers had agreed to a temporary compromise for the benefit of all and concluded that the fact certain classes of employees were singled out for disparate treatment did not constitute evidence of arbitrary action, bad faith or fraud.

In the Belen case, supra, six psychologists employed by the Board of Education alleged that the Woodbridge Federation of Teachers had failed to fulfill its duty of representing the psychologists fairly and without discrimination in that the Federation had failed to keep the psychologists informed of the progress of the ongoing negotiations with the school board, and dishonestly and intentionally misled them as to the status of negotiations with the Board which ultimately resulted in contract provisions which reduced the salaries of the psychologists (while all other unit members received salary increases) and increased the psychologists work hours by one half hour a day. Moreover in the Belen case, the Federation of Teachers had refused to permit the psychologists to present their own proposals to the Board's negotiating committee. The Appellate Division in this case stated that the mere fact that a negotiated agreement results in a detriment to one group of employees does not establish a breach of fair representation on the part of a labor organization. The Court further found that

there was ample credible evidence to indicate that the Federation by its actions had neither acted in bad faith nor arbitrarily in its dealings with the psychologists and the Board of Education. The Court also stressed that to have permitted the psychologists to discuss their own interests and goals with the Board would have placed too heavy a burden on the negotiations process and was "at odds with the policy of achieving harmonious employer-employee relations through collective bargaining conducted by democratically selected bargaining agents..." ^{7/}

In the instant matter, contrary to the situation in the Belen and McGrail matters, the Social Workers received the across-the-board salary increases received by all other unit members. In addition those social workers with M.S.W. degrees were placed on the MA plus 30 column of the teachers' guide instead of remaining on the MA column as a result of negotiations by the Board and the Association. There is a \$400 differential between the MA and MA Plus 30 columns of the salary guide and therefore certain social workers will receive \$1200 more over the three year contract period than they would have received had their status quo concerning their placement on the guide been maintained for the duration of the agreement. It is therefore apparent to us that far, from suffering a detriment as a result of the Association's negotiations with the Board, certain social workers received additional salary benefits not enjoyed by the large majority of other individuals within the negotiations unit.

^{7/} 142 N.J. Super. 486 at 492.

Moreover, the record is replete with evidence that many accommodations were made by the Association to permit the Social Workers to submit and advance their positions. The Social Workers were invited to submit proposals and to document them, discussions took place between the Social Workers and the Association's negotiating team concerning said proposals, the Association's enunciated position with regard to parity was reassessed after complaints were lodged by the Social Workers, and the Social Workers were permitted to designate a resource person to press the Social Workers' interests during the course of negotiations with the Board. We find nothing in the record to indicate that the Association acted discriminatorily or in bad faith concerning the Social Workers. The Association more than adequately represented the interests of the Social Workers within the framework of the overall negotiations with the Board concerning all the members of the unit.

The Social Workers in their exceptions refer to certain statements made by Association leaders which they contend evince hostility to the social workers within the unit. The Social Workers cite in part a letter sent by the Association's then President, Dr. James Federici, to one of the social workers in the unit that in part states that Federici had said all that he had to say to the Social Workers concerning the ongoing negotiations. The Social Workers also allege that Federici's successor, Jill Abrams, asserted at the September 27, 1978 "fact-finding"

session that resulted in a tentative agreement between the Board and the Association that "if it were up to the teachers, they would do away with social workers all together" and that "the social workers should get out of the H.T.E.A."

After careful consideration of the entire record we find, however, that the record at best supports the inference that the Social Workers' vigorous insistence on having all of their proposals (especially the "parity with psychologists" proposal) aggressively pressed by the Association, even to the point of adversely affecting the resolution of a contractual dispute affecting approximately 800 individuals (including the seven social workers) antagonized individuals within the Association at times.^{8/} There is no record support, however, for the Social Workers' contention that the Association itself, through its agents and representatives, acted arbitrarily, discriminatory or in bad faith in its representation of the Social Workers in the negotiations unit.

One last comment is in order concerning the Social Workers' exceptions. The Social Workers allege essentially that the Hearing Examiner's findings of fact ignore the existence of contrary testimony submitted by the Social Workers and that he,

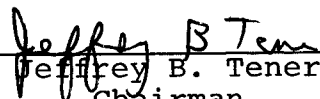
^{8/} The record reveals that the Social Workers' resource person, John Griffiths, argued with the Association's negotiating team that the Board's settlement proposal of September 27, 1978 which the Association later accepted be rejected and maintained that formal fact-finding be initiated because the Board did not accept the Social Workers' parity proposal.

at the very least, should have cited that contrary evidence and specifically stated why he found that evidence to be irrelevant or not credible. The Commission concludes that this exception again is completely without merit. We find that the Hearing Examiner did not ignore the Social Workers' proffered testimony and the positions they took in support of the charge. He simply did not agree with the Social Workers' conclusions of law based on the record testimony. His Recommended Report and Decision clearly reflects his determination that, even assuming arguendo that the Social Workers' factual submissions were all uncontroverted (and most were uncontroverted), there was no evidence that the Association had breached its duty of fair representation.

ORDER

Based upon the entire record and for the above-stated reasons, the Complaint herein is dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

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

DATED: Trenton, New Jersey
November 14, 1978
ISSUED: November 15, 1978

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

In the Matter of

HAMILTON TOWNSHIP EDUCATION ASSOCIATION,
Respondent,

- and -

Docket No. CO-78-105-63

HAMILTON TOWNSHIP SCHOOL SOCIAL WORKERS
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed by the Social Workers against the Education Association, which is the collective negotiations representative for the social workers as well as classroom teachers. The Social Workers alleged that the Education Association had breached its statutory duty of fair representation in the negotiations which led to the current collective negotiations agreement. It was the position of the Social Workers that the Education Association should have pressed further with the Hamilton Township Board of Education the proposal of the Social Workers that they receive parity in pay with the school psychologists. The Education Association did press in negotiations for parity of the Social Workers with the school psychologists but at the final meeting on September 27, 1977 the Education Association accepted a proposal of the Board that the Social Workers be raised on the salary guide from "M.A." to "M.A. plus 30" and, in addition, would receive the across-the-board increases negotiated for all members of the negotiations unit.

The Hearing Examiner concluded that the Education Association had fully and fairly represented the interests of the Social Workers in negotiations, citing a series of decisions of the United States Supreme Court as well as a 1976 Appellate Division decision of the Superior Court of New Jersey. Relying upon these decisions the Hearing Examiner found that the Education Association had not violated the New Jersey Employer-Employee Relations Act. The Hearing Examiner noted that the Education Association had pressed the Social Workers' salary parity proposal to the very end, and that in the negotiations in May, June and September of 1977 the Social Workers had a resource person present to articulate the interests of the Social Workers in negotiations. The mere fact that the Social Workers were dissatisfied with the outcome of negotiations does not result in a violation of the duty of fair representation.

A Hearing Examiner's Recommended Report and Decision is not a final administrative action 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/or Conclusions of Law.

STATE OF NEW JERSEY
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RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP EDUCATION ASSOCIATION,

Respondent,

- and -

Docket No. CO-78-105-63

HAMILTON TOWNSHIP SCHOOL SOCIAL WORKERS
ASSOCIATION,

Charging Party.

Appearances:

For the Hamilton Township Education Association
(Joel S. Selikoff, Esq.)

For the Hamilton Township School Social Workers Association
Dietrich, Allen & St. John, Esqs.
(Charles P. Allen, Jr., Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 18, 1977, which was amended on January 4, 1978, by the Hamilton Township School Social Workers Association (hereinafter the "Social Workers" or the "Charging Party") alleging that the Hamilton Township Education Association (hereinafter the "Respondent" or the "Association") 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, which is the collective negotiations representative, inter alia, of the Social Workers, did in the last contract negotiations fail to represent fairly the interests of the Social Workers, which is alleged to be a violation of N.J.S.A. 34:13A-5.4(b)(1) and (3). ^{1/}

1/ These Subsections prohibit employee organizations, 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) 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."

(Cont'd. next page)

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 February 28, 1978. Pursuant to the Complaint and Notice of Hearing, hearings were held on May 4 and May 5, 1978 in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, and present relevant evidence. ^{2/} Post-hearing briefs were filed by the parties on August 11, 1978.

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 the briefs filed by 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 Hamilton Township Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
2. The Hamilton Township School Social Workers Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. The Association is recognized as the exclusive collective negotiations representative for all certificated full-time classroom teachers, including, inter alia, Department Heads, Guidance Counsellors and Social Workers (R-1; Article I). There are approximately 810 employees in the unit, of which seven (7) are Social Workers.
4. The collective negotiations for the current agreement (R-1), effective during the term July 1, 1977 through June 30, 1980, commenced in July 1976.
5. In preparation for negotiations, the Association met with individual

1/ (cont'd. from page 1)

The Respondent filed a Motion to Dismiss as to the alleged Subsection (b)(3) violation (C-3) on the ground that the Charging Party lacks standing, in that it is not a public employer. At the hearing on May 4, 1978 the Hearing Examiner granted the Respondent's Motion to Dismiss (1Tr. 13).

2/ At the conclusion of the hearing on May 5, 1978, the Hearing Examiner suggested oral argument on a separate date, following receipt of the transcripts. The Hearing Examiner subsequently decided to receive post-hearing briefs from the parties in lieu of oral argument, which was waived.

groups, which it represented, and invited the groups to bring forth contract proposals. Representatives of the Association met with the Social Workers first in December 1975.

6. The proposals submitted by the Social Workers included: (1) salary parity with the school psychologists (CP-4) ^{3/}; (2) job descriptions for social workers to be incorporated into the collective negotiations agreement (CP-3); (3) the elimination of the word "teacher" from the collective negotiations agreement as referring to all employees covered by the agreement; and (4) car storage, as a travel expense, at the rate of \$25 per month.

7. In a brochure issued in September 1976 (CP-2), entitled "H.T.E.A. Proposal Highlights", the Association unilaterally modified the parity proposal of the Social Workers, stating that Social Workers should be on the "M.A. plus 30 salary guide, ^{4/} and should receive extra compensation for any hours worked in excess of the contract provisions." The brochure also provided that job descriptions for Social Workers must be approved by the Association. There was no reference to the other proposals of the Social Workers.

8. Under date of September 16, 1976 the Social Workers sent a response to the modification of their proposal by the Association to the then President of the Association, Dr. James Federici, protesting the changes made by the Association as set forth in the Association's brochure "H.T.E.A. Proposal Highlights" (CP-2), supra. This protest was signed by five Social Workers, including John Griffiths, who will be referred hereinafter (CP-10). Dr. Federici responded to Mr. Griffiths under date of September 21, 1976, assuring him that the Association was doing everything possible to represent the Social Workers fairly (CP-9).

9. On September 30, 1976 Mr. Griffiths, representing the Social Workers, sent a memo to Dr. Federici, further reiterating the objection of the Social Workers to the Association having proposed "M.A. plus 30" for the Social Workers instead of the proposal of parity with the school psychologists (CP-11). A meeting was requested by Mr. Griffiths with representatives of the Association.

10. A meeting was convened by the Association, which was held on November 1, 1976 with the following persons in attendance: For the Association -- Dr. Federici,

^{3/} This was submitted by the Social Workers to Thomas Cavanaugh, member of the Association negotiating committee, on March 16, 1976. The addendum to the Social Workers' salary proposal (CP-5) was also submitted to Mr. Cavanaugh on an unspecified date.

^{4/} The Respondent's source for "M.A. plus 30" was item 6 of the addendum to the Social Workers salary proposal (CP-5). Under the prior collective negotiations agreement the Social Workers were at "M.A." on the salary guide.

President; Linda Balitz and Thomas Cavanaugh, members of the Association's negotiating committee; and Harry Donnelly, the NJEA representative. For the Social Workers -- Mr. Griffiths and five social workers. The Association's representatives stated that the parity proposal of the Social Workers involved too much money. However, the meeting concluded with the understanding that if the Association proposed a multi-year contract, then parity between the Social Workers and the school psychologists would be proposed in the second year. This understanding was subsequently confirmed in a letter from Dr. Federici to Mr. Griffiths dated December 4, 1976 (CP-12). That letter also stated that the Association welcomed the presence of a social worker as a resource person at any negotiations session that concerned the specific terms and conditions of employment of Social Workers.

11. On February 22, 1977 the Social Workers filed an Unfair Practice Charge against the Association (Docket No. CO-77-225), which was withdrawn on May 3, 1977, following a meeting at the Commission offices between the parties on April 27, where it was agreed that the Social Workers would have a resource person present at all negotiations involving the Social Workers. Mr. Griffiths was the resource person designated by the Social Workers.

12. As noted previously, negotiations for the current agreement (R-1) started in July 1976. There were negotiations meetings of the Association and the Hamilton Township Board of Education (hereinafter the "Board") in August and September, with a hiatus occurring until December 1976, as a result of a Commission-conducted representation election involving the American Federation of Teachers. There were negotiations meetings in January, which were suspended until March 1977, as a result of a charge of unfair practices filed by the Board. Stanley Aiges was then appointed mediator and the first mediation session was March 23, 1977.

13. At the first mediation session on March 23, and at the second session on April 21, 1977, Mr. Griffiths was not present, nor was any other Social Worker. This changed as a result of the agreement on the withdrawal of the Unfair Practice Charge, May 3, 1977, supra, and as a result, Mr. Griffiths was present at all sessions thereafter.

14. The job description and car storage proposals of the Social Workers were discussed with the mediator, Mr. Aiges, at three mediation sessions: March 23, April 21 and May 13, 1977. The May 13 session was the first one where Mr. Griffiths was present for the Social Workers. At the mediation session on May 13 the Association negotiating committee withdrew both the job description and car

storage proposals of the Social Workers, this being done at the suggestion of the mediator in his efforts to get the parties to settle on their language differences. Mr. Griffiths objected to the withdrawal of the job description proposal but not the car storage proposal.

15. Following several brief mediation meetings in June, the next significant mediation session occurred on September 7, 1977 where the appointed Fact Finder, Lawrence Hammer, was present and the Social Workers' parity proposal was first discussed. The Association negotiating committee took the position that if there was a one-year contract, their proposal would be that the Social Workers receive "M.A. plus 30" on the salary guide. If, however, there was multi-year contract, then the proposal would be that the Social Workers receive parity with the school psychologists in the second year. Mr. Hammer reported that the Board was unwilling to accept either Association proposal for the Social Workers, but was offering instead across-the-board raises on a three-year contract of 7%, 7% and 6 $\frac{1}{2}$ % for all employees in the negotiations unit. The Association negotiating committee declined to consider the Board's offer and the meeting concluded with the understanding that the parties would go to fact finding, which was scheduled for September 27, 1977.

16. At the September 27 meeting Mr. Hammer tried to avoid the commencement of fact finding, preferring to mediate further. Mr. Griffiths had between meetings prepared a salary guide for Social Workers, dated September 22, 1977 (R-2), which indicated the cost of parity for Social Workers with school psychologists would be \$55,800.00, based on the current number of Social Workers. Mr. Hammer returned, at one point, from a caucus with the Board, and suggested a salary settlement for the Social Workers without parity, stating that the Board would agree to "M.A. plus 30" for Social Workers in the first year of a three-year contract with across-the-board increases of 7%, 7% and 6 $\frac{1}{2}$ %. Mr. Hammer indicated that if he served as Fact Finder for the parties he would reject the Social Workers' parity proposal.

17. There was also at issue between the Association and the Board a prescription plan for the entire negotiations unit, which it was estimated would cost \$60,000, or about as much as the Social Workers' parity proposal (R-2). Over the objection of Mr. Griffiths, the Association negotiating committee on September 27 finally voted to accept the Board's proposal, a three-year contract with "M.A. plus 30" for Social Workers the first year, the prescription plan for all unit members in the first year and the across-the-board raises of 7%, 7% and 6 $\frac{1}{2}$ %. There was also included Blue Cross and Blue Shield in the second year for all unit members.

18. Mr. Griffiths confirmed on redirect examination that the Social Workers' demand for parity with the school psychologists was unreasonable (2Tr. 80).

19. Other individual groups, for whom the Association negotiates, submitted proposals for negotiations, including the Guidance Counsellors and the Department Heads. Only the Social Workers had a resource person in the collective negotiations which resulted in the current agreement (R-1), except that the Department Heads did have someone present at the last meeting on September 27, 1977. Mr. Griffiths acknowledged that he was treated no differently than any other resource person.

20. Mr. Griffiths stated that his conception of the role of the Association's negotiating committee is to negotiate with the Board the proposals of the Social Workers, and that the negotiating committee should not "sift out" Social Workers' proposals (2Tr. 58, 59). Mr. Griffiths stated that a shortcoming of the Association's negotiating committee was its failure to "counsel" the Social Workers (2Tr. 50). He acknowledged that the members of the Association's negotiating committee did not mislead the Social Workers (2Tr. 50).

THE ISSUE

Did the Respondent Association violate Subsection (b)(1) of the Act by failing to represent fairly the interests of the Social Workers in the collective negotiations, which preceded the current collective negotiations agreement (R-1)?

DISCUSSION AND ANALYSIS

Positions of the Parties

As reference to the briefs of both parties indicates, there is substantial agreement on the pertinent cases involved. The parties differ on the applicability of the cases cited by them and what conclusions should follow therefrom.

Thus, the Social Workers cite Vaca v. Sipes, 386 U.S. 171 (1967), Humphrey v. Moore, 375 U.S. 335 (1963), Ford Motor Company v. Huffman, 345 U.S. 330 (1953) and Belen v. Woodbridge Township Board of Education, 142 N.J. Super. 486 (App. Div. 1976).

The Respondent Association cites all of the foregoing cases plus Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971), a decision of the Seventh and of the Eighth Circuit Courts of Appeals and two Commission decisions: Jefferson Township Board of Education, P.E.R.C. No. 61 (1971) and Union County Board of Chosen Freeholders, E.D. 49 (1974).

The cases will not be discussed at this point but will be discussed hereinafter as they apply to the matter sub judice.

The Respondent Association Did Not Violate Its Duty of Fair Representation as to the Social Workers

The most frequently cited case on the statutory duty of fair representation is Vaca v. Sipes, supra. There a union member sued his union and his employer, contending that he had been discharged in violation of a collective bargaining agreement, and that the union had arbitrarily and capriciously refused to process his grievance to arbitration. At one point in its decision, the Supreme Court noted that the duty of fair representation includes a "...statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." (386 U.S. at 177). In its holding, the Supreme Court said "...A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the unit is arbitrary, discriminatory or in bad faith." (386 U.S. at 190). (Emphasis supplied).

In Humphrey v. Moore, supra, certain employees represented by a union challenged that union's actions in advocating, before a joint employer-employee committee, the dovetailing of the seniority lists of two employers, both of whose employees the union represented at a time when one of the employers was relinquishing its business territory to the other. In upholding the union's right to have made the decision to dovetail, the effect of which resulted in the loss of jobs to several of its unit members, the Supreme Court stated that where there is a dispute between two sets of employees represented by the same union, the union has the right to take a position favoring one over the other, but must do so "...honestly, in good faith and without hostility or arbitrary discrimination." (375 U.S. at 350). The Supreme Court observed that the president of the union, in advocating the dovetailing of the seniority lists, followed a course which afforded the most equitable solution for all concerned.

In the case of Ford Motor Company v. Huffman, supra, the Supreme Court had before it a matter wherein discretion was exercised by a union involved in substantive collective bargaining which resulted in an adverse effect upon one group of unit members relative to others. The plaintiffs in that case contended that as a result of an agreement reached in bargaining between their union and the employer, concerning pre-employment military service credit, their seniority positions were affected adversely relative to that of other unit members. In up-

holding the union's right to have entered into that agreement, the Supreme Court, as it later did in Vaca v. Sipes, supra, emphasized that a union must be given the right to exercise discretion in determining whether to accept or reject certain proposals put forth in the collective bargaining process. In this connection, the Supreme Court noted that "...A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents subject always to complete good faith and honesty of purpose in the exercise of its discretion." (345 U.S. at 338).

See also, Motor Coach Employees v. Lockridge, supra, and the decisions of the Courts of Appeals in Corcoran v. Allied Supermarket, Inc. 498 F.2d 527 (8th Cir. 1974) and Dwyer v. Climatrol Industries, Inc., 544 F.2d 307 (7th Cir. 1976) in connection with the foregoing.

Both parties, as noted previously, cite Belen v. Woodbridge Township Board of Education, supra, 1976 Appellate Division decision, the facts of which closely parallel those in the instant case. In that case six psychologists, members of a negotiating unit represented by the Federation of Teachers, brought suit claiming a violation of N.J.S.A. 34:13A-5.4, claiming that the Federation of Teachers had "...failed to fulfill its duty of representing plaintiffs fairly and without discrimination..." (142 N.J. Super. at 488). The failure in the duty of representation allegedly occurred when the Federation of Teachers failed to keep the psychologists informed of the status of negotiations and intentionally misled them with respect thereto. Further, it was alleged that the Federation of Teachers had reached an agreement with the Board of Education, which had actually reduced the plaintiffs' salaries and increased their working hours. The Appellate Division, citing Vaca v. Sipes, Ford Motor Company v. Huffman, and Humphrey v. Moore, supra, found that despite the fact that plaintiffs were the only unit members to suffer a reduction in pay, and that the defendant Federation of Teachers had refused plaintiffs' request to be informed of the status of negotiations, and that the defendant Federation of Teachers had rejected plaintiffs' request to present their own case to the negotiators for the Board of Education, the foregoing actions of the Federation fell far short of being deceptive, discriminatory, arbitrary or misleading, and that there was no requirement under the law that plaintiffs be allowed to present their own proposals to the employer. (See 144 N.J. Super. at 492). The judgment of the trial court for the defendants was thus affirmed.

As noted previously, the Respondent Association cites the decision of the Executive Director in Union County Board of Chosen Freeholders, supra, where the case of McGrail v. Detroit Federation of Teachers, 82 LRRM 2623 (Mich. Cir.

Ct. 1973) was quoted. The court in McGrail said at one point, in the course of holding that the union in that case did not violate its duty of fair representation:

"...The law basically says that the union should have broad discretion in negotiating contracts, weighing advantages and disadvantages of different proposals, and that to allow every dissatisfied person to challenge the validity of certain contracts without showing a strong indication of a breach of the duty to fairly represent, would create havoc in the field of labor law..." (82 LRRM at 2624).

Based upon the principles contained in the cases above-cited and discussed, the Hearing Examiner finds and concludes that the Respondent Association did not violate its statutory duty of fair representation with respect to the interests of the Social Workers in the contract negotiations, which resulted in the current collective negotiations agreement (R-1). In reaching this conclusion, the Hearing Examiner has fully considered the record made in this case. The record is replete with facts indicating clearly that the Respondent Association fulfilled, and indeed exceeded, the legal requirements embodied in the duty of fair representation.

The negotiations for the current agreement commenced in July 1976. The Association, in preparation for negotiations met with the Social Workers in December 1975, more than six months prior to the commencement of contract negotiations. The Social Workers submitted a wage proposal on March 16, 1976 which urged salary parity for the Social Workers with the school psychologists (CP-4). Subsequently the Social Workers also submitted a salary addendum prior to the commencement of negotiations, item 6 of which proposed "M.A. plus 30" for Social Workers on the salary guide (CP-5).

In the proper exercise of its discretion, the Respondent Association elected to present to the Board on behalf of the Social Workers a wage proposal based upon item 6 of the Social Workers' addendum, and this fact was communicated in a brochure issued by the Association in September 1976 entitled "H.T.E.A. Proposal Highlights" (CP-2). The Association had concluded prior thereto that salary parity of the Social Workers with the school psychologists was too costly an item to present to the Board in negotiations. This was a proper exercise of discretion by the Association under the above-cited cases, in particular, Ford Motor Company v. Huffman, wherein the Supreme Court stated "...Any authority to negotiate derives its principal strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant

considerations, they believe will best serve the interests of the parties represented." (345 U.S. at 337-38).

However, the Social Workers protested to the Association the fact that the parity proposal with school psychologists had not been presented to the Board as the Association's negotiating proposal for Social Workers. In response thereto, the Association advised the Social Workers that it would modify its salary proposal for Social Workers to include parity with school psychologists in the second year of a multi-year contract. In other words, if there was to be a one-year contract then the Association's position would be "M.A. plus 30" for Social Workers but, if there was a multi-year contract, then parity would be proposed for Social Workers in the second year.

The Association did in fact press such a position in its negotiations with the Board although it ultimately on September 27, 1977 withdrew the parity proposal for Social Workers and reached an agreement with the Board for "M.A. plus 30" for Social Workers in the first year of a three-year agreement. This was plainly a proper action of the Association and was done in the context of the discretion exercised by a negotiating committee in the give and take of collective negotiations. The Social Workers, as did all unit members, received the across-the-board increases of 7%, 7% and 6 $\frac{1}{2}$ %, in addition to "M.A. plus 30" on the salary guide.

The Hearing Examiner takes especial note of the fact that at the final negotiations session on September 27, 1977 the Association negotiating committee had before it a proposed salary guide for Social Workers (R-2), dated September 22 and prepared by Mr. Griffiths, which indicated that the cost of parity for Social Workers with school psychologists would be \$55,800, a clearly outlandish figure, considering the fact that there were only seven social workers involved. The Association properly traded off the cost of the parity demand of the Social Workers for a prescription plan for the entire negotiations unit of 810 members, which was estimated would cost \$60,000, or just a little more than the Social Workers' parity proposal.

Even Mr. Griffiths conceded that the parity proposal was "unreasonable". The Association also had been told by the Fact Finder, Mr. Hammer, that if the dispute went to fact finding he would not accept the parity proposal on behalf of the Social Workers. Plainly, all of the foregoing considered together, give full support of the conclusion that the Association fully and fairly represented the interests of the Social Workers in the matter of advancing the Social Workers'

salary proposals, ranging from salary parity with school psychologists to "M.A. plus 30" on the salary guide. It is noted that the Social Workers under the prior agreement were at "M.A." on the salary guide so that they made a substantial advancement on the salary guide in the current agreement, in addition to receiving the across-the-board wage increases received by all members of the negotiations unit.

Although the principal concern of the Social Workers in negotiations was the wage proposal for parity with school psychologists, there were also three other demands which were presented by the Association to the Board in contract negotiations. These included the proposed change in the contract of the generic term "teacher" as representing all employees plus the job description proposal and the request for car storage at the rate of \$25 per month. These proposals were ultimately withdrawn by the Association as part of the negotiations over language changes, which preceded the September 1977 negotiations meetings on economics. It is noted that Mr. Griffiths, on behalf of the Social Workers, did not really make an issue with the Association negotiation committee over the withdrawal of these proposals after they had been proposed to the Board.

Note is also taken of the fact that the Social Workers were offered in December 1976 the opportunity to have a resource person present at any negotiations session that concerned the terms and conditions of employment of Social Workers. No other individual group was offered like consideration although the Department Heads had a representative at the last meeting on September 27, 1977. Notwithstanding that the Social Workers were offered this opportunity to have a resource person present in December 1976, they did not elect to accept the Association's offer and, for reasons not entirely clear, they awaited the resolution of an unfair practice charge against the Association in May 1977 before availing themselves of the opportunity to have a resource person present. Mr. Griffiths was thereafter designated as that person.

By the presence of Mr. Griffiths the Social Workers had an articulate and effective representative in the negotiations sessions involving Social Workers and the Hearing Examiner is persuaded that the Association effectively responded to the input which Mr. Griffiths provided on behalf of the Social Workers. In using the term "negotiations" the Hearing Examiner is, of course, referring to the sessions from March to September 1977 during which a mediator and fact finder participated as intermediaries between the parties.

It appears to the Hearing Examiner that the Charging Party in this case

has clearly misconceived the role of a negotiating committee in contract negotiations. This is evidenced by the testimony of Mr. Griffiths that he saw the negotiating committee as a conduit to the Board of proposals offered by the Social Workers, and that the negotiating committee should not "sift out" the Social Workers' proposals. He also stated that a shortcoming of the Association's negotiating committee was its failure to "counsel" with the Social Workers, clearly an irrelevancy to contract negotiations. He admitted that the Social Workers were not misled by the Association's negotiating committee and that no deception was practiced on the Social Workers.

In conclusion, the Hearing Examiner is of the view that the record establishes no violation by the Respondent Association of its duty of fair representation to the Social Workers, based upon the guidelines set forth in the previously cited authorities of the Federal courts and of the Appellate Division of the State of New Jersey in Belen, supra. Accordingly, the Hearing Examiner must recommend dismissal of the Complaint in its entirety.

* * * *

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

CONCLUSIONS OF LAW

The Respondent Association did not violate N.J.S.A. 34:13A-5.4(b)(1) in representing the interests of the Social Workers in contract negotiations which resulted in the current collective negotiations between the Association and the Board.

RECOMMENDED ORDER

The Respondent Association not having violated the Act, supra, it is **HEREBY ORDERED** that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: August 21, 1978
Trenton, New Jersey