

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HANOVER PARK REGIONAL HIGH SCHOOL  
DISTRICT BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-79-250-18

HANOVER PARK REGIONAL EDUCATION  
ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission determines that the Hanover Park Regional High School District Board of Education did not violate N.J.S.A. 34:13A-5.4(a)(1), (5), and (7) when it unilaterally refused to fund the merit compensation policy for the second year of a two year agreement. The Commission holds that, based upon the parties' collective agreement and the Board's Merit Compensation Policy Statement, the Board met its negotiations obligation on this topic and hence did not violate the Act. The parties had contractually agreed that proposed modifications to the policy be submitted to a merit committee rather than the Association. After instituting a change through that procedure, the Board had the right to establish the budgetary amount to implement the program.

The Commission found it unnecessary to determine herein whether or the extent to which merit compensation programs are within the scope of collective negotiations.

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Appearances:

For the Respondent, Green, Koenig & Dzwilewski, Esqs.  
(Mr. Jacob Green, of Counsel)

For the Charging Party, Mr. John W. Davis. NJEA UniServ  
Representative

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on March 19, 1979, by the Hanover Park Regional Education Association (the "Association") alleging that the Hanover Park Regional High School District 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"), by failing to award increases provided for in a merit compensation plan.

The action was alleged to be violative of N.J.S.A. 34:13A-5.4(a)(1), (5), and (7). <sup>1/</sup>

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on September 25, 1979. Thereafter, a hearing was held on November 14, 1979, before Commission Hearing Examiner Alan R. Howe in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence, and to argue orally.

At the hearing neither party presented witnesses and, pursuant to N.J.A.C. 19:14-6.7, the parties stipulated the facts in this matter as those contained within the transcript and the exhibits and documents submitted, 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 Association submitted a brief on December 17, 1979, and the Board submitted a brief on December 21, 1979.

Based on the entire record, including the stipulated facts submitted in this matter, the Commission finds the following:

1. The Board is a public employer within the meaning of the Act and is subject to its provisions.

<sup>1/</sup> These subsections prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

2. The Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Charge was filed in this matter on March 19, 1979, alleging violations of §§ (a)(1), (5), and (7) of the Act.

4. The Association alleges that the Board refused to award merit increases in the 1979-80 school year that are provided for in Article IV Section A(2) of the parties' collective agreement and the Board's Merit Compensation Policy Statement.

5. The Board acknowledged the refusal to award merit increases but denied that it committed any violation of the Act, arguing that it had the discretion to fund the merit compensation program and that the Association waived any rights it may have had to negotiate the issue.

6. The parties stipulated the facts as those contained within the transcript and the numerous exhibits submitted at the hearing. The issue concerns the application of Article IV Section A(2) of the parties' collective agreement as well as the Merit Compensation Policy Statement. 2/

2/ The operative language of Article IV Section A(2) are the second and third sentences of the following:

2. Teachers who have not attained tenure will receive \$350.00 less than indicated on the attached Salary Guide for steps 4 through the maximum step. An additional stipend shall be added to the attached Salary Guide for those employees who have attained Merit under applicable Board Policy. Proposals for modification of Board Policy concerning Merit shall be referred to the Merit Committee before submission to the Board.

The last sentence of the following clause is the operative language of the Merit Compensation Policy Statement:

A. Merit consideration shall be based on performance evaluation of the teacher's primary assignment, activities beyond the primary assignment, and professional relationships and growth. Merit compensation will be awarded for a twofold

(Cont'd)

The facts of the case reveal that as early as 1960, which was prior to the parties' negotiations relationship, the Board adopted a merit compensation plan as part of Board policy. In the first collective agreement between the parties in 1969, and in all subsequent agreements, the Board's merit compensation plan was incorporated by reference into the parties' collective agreements. The Board maintained that the Association never negotiated a merit compensation program, and the parties, in fact, stipulated that throughout their negotiations history the Association has never made a written proposal in negotiations concerning the Merit Compensation Policy. <sup>3/</sup>

Beginning in the early 1970s, the parties agreed upon language in their collective agreements, which exists in their present agreement, that proposals for modification of Board policy concerning the merit plan be referred to the Merit Committee before submission to the Board. <sup>4/</sup> Beginning in 1975, the Board, following the above procedure, submitted proposed changes of the merit plan to the Merit Committee which culminated with the Board's adoption of the changes in 1976 described below.

The change pertinent to the within discussion was the addition of the following sentence to the Merit Compensation Plan: "The budgetary amount available to implement this merit

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2/ (Cont'd)

purpose: (1) to reward a teacher for outstanding service to the District for the three years prior to the award and (2) to encourage continued meritorious service. The budgetary amount available to implement this merit compensation plan will be established by the Board of Education.

3/ Transcript ("T") p. 20

4/ See n. 2, supra

compensation plan will be established by the Board of Education." <sup>5/</sup>  
Prior to the Board's actual adoption of the above sentence, the  
same was submitted to a faculty vote on January 28, 1976, and it  
was approved. <sup>6/</sup> Once again, on November 18 and December 1, 1977,  
(one school on each day) the same issue was presented to the  
faculty and it was again approved. <sup>7/</sup>

The current collective agreement between the parties  
is effective from July 1, 1978 through June 30, 1980. During  
the first year of the agreement, candidates for merit compensation  
were selected by the Committee according to its procedures and they  
were paid the merit compensation provided in the policy statement.  
However, on January 25, 1979, the Superintendent advised the Merit  
Committee that there would be no new merit increases for the 1979-80  
school year because of economic conditions. <sup>8/</sup> The following day  
the Superintendent met with the Association President and advised  
him of the Board's decision.

The Association has alleged that the Board's refusal to  
provide the merit increases for 1979-80 is a violation of the Act.  
The Association maintains that merit compensation has been a con-  
tractual item over which the parties have negotiated, and that  
merit compensation is within the scope of negotiations.

The Board argues that it did not violate the Act by  
refusing to provide merit increases for 1979-80. The Board con-  
tends that the merit policy was not negotiated by the Association,

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<sup>5/</sup> See n. 2, supra

<sup>6/</sup> T. p. 10

<sup>7/</sup> T. pp. 12-13

<sup>8/</sup> T. p. 16

that the parties' agreement specifically provides that any changes in the policy be presented to the Merit Committee rather than the Association, and that the Board has the discretion to decide the amount of money available to implement the policy.

Assuming, arguendo, that the instant merit compensation plan is an appropriate subject for negotiations, the Commission, upon review of the entire record herein, nevertheless finds that no unfair practice was committed by the Board in refusing merit increases for 1979-80. <sup>9/</sup> The Commission has considered **similar** issues in many cases and has held that where parties to a collective agreement have negotiated a clause(s) that may in effect waive future negotiations on a particular subject, it must be determined whether the respondent met its negotiations obligation concerning the particular subject as evidenced by the contractual provision. See In re Jamesburg Board of Education, P.E.R.C. No. 80-56, 5 NJPER 496 (¶ 10253 1979); In re State of New Jersey, P.E.R.C. No. 79-33, 5 NJPER 27 (¶ 10018 1978); In re Sayreville Board of Education, P.E.R.C. No. 78-41, 4 NJPER 70 (¶ 4034 1978).

In the Sayreville matter, supra, the parties had negotiated a clause giving the superintendent the right to prepare the school calendar after eliciting participation by the Association. When the Board in that case adopted the calendar, the work year had been changed. The Association sought to negotiate the change in the work year but the Board refused, alleging that the Association has waived its right as evidenced by the

<sup>9/</sup> It is unnecessary in this proceeding to determine the negotiability of a merit compensation plan.

contractual clause. The Commission held that the Board met its obligation to elicit Association participation and, therefore, no violation occurred. In effect, the Association, by agreeing to that clause, had negotiated regarding that subject and had agreed to a contract clause which permitted the Board to act after eliciting Association participation.

In the instant matter, the parties clearly negotiated and agreed to Article IV Section A(2) which provides for merit compensation under Board policy and that any modification of the merit policy be referred to the Merit Committee.<sup>10/</sup> By this language, the Association negotiated with the Board and agreed that changes in the policy shall be referred to the Merit Committee before submission to the Board. The Association also agreed by reference that the merit plan was subject to Board policy. These negotiations fulfilled the obligation of the Board to negotiate regarding this matter.

Beginning in 1975, the Board sought to change its merit policy and, in accordance with Article IV Section A(2), it submitted its proposed changes to the Merit Committee. The Committee eventually adopted the changes and the Board even submitted the changes to a faculty vote which approved the changes prior to the Board's formal acceptance thereof. The pertinent change in the Merit Policy Statement was that the Board would establish the budgetary amount available to implement the merit policy.<sup>11/</sup>

The Association contends that the parties had agreed upon a monetary amount to implement the merit program. However, the fact remains that the parties' collective agreement and the

<sup>10/</sup> See n. 2, supra  
<sup>11/</sup> See n. 2, supra



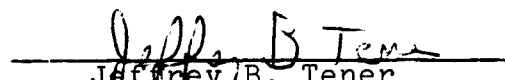
Board's Merit Policy Statement are silent as to the amount of money for merit compensation, and only the Board's Merit Policy Statement makes any reference to money for the program. The policy statement provides for \$1,000 to be awarded to each recipient but that section of the policy statement is subject, without limitation, to the Board's establishing a budgetary amount.

In the instant matter, even assuming arguendo the negotiability of the merit plan, the parties negotiated a clause concerning merit compensation and the Board complied with that clause when it changed the merit policy. The Board thereafter, in accordance with the terms of the agreement, had the right to establish the budgetary amount, if any, available for the merit plan.

ORDER

For the foregoing reasons and based upon the entire record, it is hereby ORDERED that the Association's complaint herein is dismissed in its entirety. 12/

BY ORDER OF THE COMMISSION

  
 Jeffrey B. Tener  
 Chairman

Chairman Tener and Commissioner Parcels voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained. Commissioner Hartnett was not present.

DATED: Trenton, New Jersey

February 19, 1980

ISSUED: February 21, 1980

12/ The Association did not allege any independent violations of N.J.S.A. 34:13A-5.4(a)(1), nor did it specify those sections of the Commission's Rules alleged to have been violated under N.J.S.A. 34:13A-5.4(a)(7). Therefore, these allegations are being dismissed as well as the alleged violation of N.J.S.A. 34:13A-5.4(a)(5).