P.E.R.C. NO. 89-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-87-51-113

MARY CARRINGTON,

Charging Party.

## SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Mary Carrington against the Old Bridge Education Association. The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act by pressuring the Old Bridge Board of Education to rescind an increased differential for teachers with doctorates. The Commission finds that the charging party has not proved that the Association acted in bad faith in negotiating and ultimately resolving disputes associated with the 1985-1988 agreement. In P.E.R.C. No. 88-69, the Commission dismissed allegations against the Board and another allegation against the Association.

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MARY CARRINGTON,

Charging Party.

Appearances:

For the Respondent, Oxfeld, Cohen, Blunda, Friedman, LeVine & Brooks, Esqs. (Sanford R. Oxfeld, of counsel)

For the Charging Party, Mary A. Carrington, _pro se_

## DECISION AND ORDER

On February 10 and March 17 and 24, 1987, Mary Carrington ("charging party") filed an unfair practice charge and amended charges against the Old Bridge Education Association ("Association") and the Old Bridge Board of Education ("Board"). The charging party alleges that the Association violated the New Jersey Employer-Employee Relations Act, _N.J.S.A._ 34:13A-1 _et seq_, specifically subsections 5.4(b)(1) and (5),[1/] by pressuring the Board to rescind an increased differential for teachers with

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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; (5) Violating any of the rules and regulations established by the commission."

doctorates. She alleges the Board violated subsection 5.4(a)(1),[2/] when it settled an unfair practice charge filed by the Association by rescinding the differential.

On March 9, 1987, a Complaint and Notice of Hearing issued. On March 23 and April 13, the Board and Association filed Answers admitting certain facts but denying that they violated any duty owed to the charging party.

On September 29, 30 and October 1, 1987, Hearing Examiner Mark A. Rosenbaum conducted a hearing. The charging party examined witnesses and introduced exhibits. At the conclusion of her case, both respondents moved to dismiss.

On October 1, 1987, the Hearing Examiner orally granted both motions and dismissed the Complaint. He found no evidence that the Board colluded with the Association to deprive the charging party of any monies under the contract. He also found no evidence that the Association breached its duty of fair representation. He determined that any animosity between the charging party and Association president Glenn Johnson was insufficient to establish any violations, especially since the charging party received the same differential as others with doctorates and received a salary increase equal to or better than that received by other unit members.

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2/ This subsection prohibits public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act." The charging party had alleged other subsection violations, but dropped them at the hearing.

On October 13, 1987, the charging party requested review. On October 20 and 22, 1987, the Board and the Association respectively urged affirmance of the dismissal.

On January 21, 1988, we concluded that the Hearing Examiner properly dismissed the allegation against the Board. P.E.R.C. No. 88-69, 14 NJPER 132 (¶19052 19880). We held that there was nothing to indicate it acted in bad faith in agreeing to the settlement. We found, however, that the charging party submitted sufficient evidence to survive a motion to dismiss.[3/] Accordingly, we remanded the matter to the Hearing Examiner.

On March 9, 1988, the Association examined witnesses and introduced exhibits. Both parties filed briefs and replies by June 10, 1988.

On June 22, 1988, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 88-63, __ NJPER __ (1988). He found that the charging party had not demonstrated that the Association acted in bad faith. He further found that the Association's actions reasonably accorded with its goals as majority representative.

On July 28, 1988 the charging party filed exceptions and requested oral argument.[4/] She contends that the Hearing Examiner erred in not finding a violation.

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3/ We dismissed the allegation relating to statements Johnson made in the Association newsletter.

4/ We deny that request.

The Hearing Examiner's findings of fact (pp. 3-10) are accurate.[5/] We adopt and incorporate them.

In P.E.R.C. No. 88-69, we dismissed the charge against the Board and one allegation against the Association. We have reviewed the record as a whole, including the Hearing Examiner's credibility determinations and the evidence of animosity between the charging party and the Association president. We now dismiss the remaining allegation against the Association.

The parties negotiated with the understanding that lower paid employees would receive greater increases than higher paid employees.[6/] Within that context, the Association proposed increasing the doctoral differential, but the Board rejected the proposal because the total cost of the proposed guides was already over the agreed-upon percentage increases.[7/]

A new guide, with smaller increases to bring the total within the agreed-upon amount, was ratified by the Association. The Board unilaterally added an increase for the doctoral differential to the guide it ratified. Consequently, the Association filed an

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5/ Spalthoff's sample guides that included doctoral increases were not shown to the Association nor were they Board proposals (TA44-TA45).

6/ The memorandum of agreement capped those at the top of the salary guide below the percentage general increase.

7/ The charging party claims, but did not prove, that the proposed guides were under the agreed-upon percentages. In any event, the Board and Association agreed in good faith that the initial proposal was over the agreed-upon amount and reduced the guides based on that understanding.

unfair practice charge contesting the Board's action. To settle the charge, the parties agreed to rescind future increases in the doctoral differential, but not to disturb increases already paid.

We conclude that the charging party has not proved that the Association acted in bad faith in negotiating and ultimately resolving disputes associated with the 1985-1988 agreement. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teach., 142 N.J. Super. 486 (App. Div. 1976) citing Ford Motor Co. v. Huffman, 345 U.S. 330 (1953) (wide range of reasonableness allowed in servicing the unit); see also Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986); Lawrence Tp. PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983). Contrast City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98, 99-100 (¶13040 1982) (deliberate refusal to negotiate any increase for charging party).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
October 20, 1988
ISSUED: October 21, 1988

H.E. NO. 88-63

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

In the Matter of

OLD BRIDGE EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-87-51-113

MARY CARRINGTON,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a complaint based on unfair practice charges filed by Mary Carrington against the Old Bridge Education Association. The Hearing Examiner finds that the Association did not violate its duty of fair representation when it maintained but did not increase the doctoral differential in the 1985-88 collective agreement.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination 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.

H.E. NO. 88-63

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

In the Matter of

OLD BRIDGE EDUCATION ASSOCIATION,

Respondent,

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Docket No. CI-87-51-113

MARY CARRINGTON,

Charging Party.

Appearances:

For the Respondent
Oxfeld, Cohen, Blunda, Friedman, LeVine & Brooks, Esqs.
(Sanford R. Oxfeld, of counsel)

For the Charging Party, Mary A. Carrington, pro se

## HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On February 10, 1987, as amended on March 17 and 24, 1987, Mary Carrington (Charging Party) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission), alleging that the Old Bridge Education Association (Association or OBEA) violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq. Specifically, the Charging Party alleged

that the OBEA violated subsections 5.4(b)(1) and (5) of the Act[1/] when negotiating a contract with the Old Bridge Board of Education (Board) for 1985 through 1988. The charge alleges that "pre-agreement hostility motivated the OBEA to negotiate a settlement that caused economic harm to an entire group of members, the teachers with doctorates."[2/]

On March 9, 1987, a Complaint and Notice of Hearing issued. On April 13, 1987, the Association filed its Answer, admitting certain facts and denying that it violated any duty owed to Charging Party or any unit members. On September 29, 30 and October 1, 1987 and March 9, 1988,[3/] I conducted a hearing, where the parties had opportunities to examine and cross-examine

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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; (5) Violating any of the rules and regulations established by the commission." The Charging Party alleged that the rule violated by the Association was Section 5.3 of the Act. Since that section explains a majority representative's duty of fair representation, the charge will be analyzed solely as an alleged violation of that duty.

2/ The charge also alleged that the Association defamed and threatened the Charging Party in its March 1987 newsletter and that the Old Bridge Board of Education "violated the terms and conditions of a contract that it ratified and implemented when it reduced the salaries of teachers in the doctoral category." On October 1, 1987, I granted motions of the Association and the Board to dismiss these allegations. On January 22, 1988, the Commission upheld the dismissal of these allegations. P.E.R.C. No. 88-69, 14 NJPER 132 (¶19052 1988).

3/ Transcript references are TA (hearing of September 29, 1987), TB (September 30, 1987), TC (October 1, 1987) and TD (March 9, 1988).

witnesses, introduce exhibits and argue orally. Both parties filed briefs and responsive letter briefs by June 10, 1988. Based on the entire record, and taking administrative notice of the Findings of Fact and Conclusions of Law in a prior decision involving these parties (Old Bridge Bd.of Ed. and Old Bridge Ed. Assn., P.E.R.C. No. 87-3, 12 NJPER 599 (¶17224 1986), aff'd App. Div. Dkt. No. A-622-86T6 (4/6/87)), I make the following:

FINDINGS OF FACT

1. The Old Bridge Education Association has been the majority representative of professional and nonprofessional employees of the Old Bridge Board of Education since at least 1981. The Association has an elected Executive Board (President, three Vice Presidents, Secretary and Treasurer), an Executive Committee (all officers, and a member of each of the support staff groups represented by the Association) and a Representative Council (each school has representatives proportional to the Association membership in each school). For collective negotiations, a negotiating team is formed as follows: The Association's President recommends the teacher members of the negotiating team to the Executive Board; the Executive Board votes on those individuals. Each support staff group designates an individual to be on the negotiating team, together with an advisor for each support staff group. The President of the Association serves as a non-voting member of the negotiating team. When the negotiating team votes to recommend a package for a collective agreement, the proposed

agreement is forwarded to the Executive Committee, and then to the Representative Council which publishes the package for a ratification vote by all members of the Association. (J-1, 2 and 3; TD9-15).

2. In September 1984, the Association formed its negotiations team for a successor agreement to the collective agreement with the Board expiring in June 1985. The Association's team, headed by Chief Negotiator Don Kaplan, met many times with the Board's negotiations team which included Board members George Spaltoff, Robert Carrington and Edna Gordon. Carrington is the spouse of the Charging Party. On October 7, 1985, the Association and the Board reached a memorandum of agreement for a three-year contract covering the years 1985-1986, 1986-1987 and 1987-1988. The agreement provided for salary increases of 8.3%, 8.3% and 8.7% with the proviso that "the top of the salary guide" in each of the academic years should not exceed respectively 6, 6.5 and 7%. The agreement reflected the joint concern that the guides developed by the parties after the memorandum of agreement should attempt to adjust inequities in the prior salary guides (Exhibits CP-1 and J-1, 2 and 3; TA37-38 and 64; TB46-47; and TD10-11).

3. During the next week, Spaltoff and Carrington met with Association President Glenn Johnson and Association unit member Ken Buxbaum to construct guides implementing the agreement. Kaplan joined the group in the last of these sessions. The process was not simply an application of percentages to individual steps on the

guide; instead, higher percentage increases were proposed at the lower ends of the guide and lower increases at the higher ends of the guide within the limits described in the memorandum of agreement.

All Association guides prepared during the week of post-memorandum discussions did not include figures for teachers with doctorates. Instead, consistent with the three prior agreements between the parties, base salaries for teachers with doctorates were included in the "Masters +30" guide. Accordingly, the overage/underage estimates (with respect to the cost to the Board of a straight application of 8.3, 8.3 and 8.7% to the entire 84-85 guide) included on the proposed guides did not include the cost of the doctoral differentials, whether to be maintained at the 1984-85 level, increased or decreased. Once the doctoral differentials were added, all proposed guides and the ultimate guide (CP-6) reflected "overages."[4/] Because Board representatives insisted that the guides cost out strictly within the limits of the memorandum of agreement, Association representatives took away an average of $175 per teacher to arrive at the final guide proposed to the Board (Compare E0-2 to CP-6; J-1, 2 and 3; CP-4; and TA55-58 and TB32-33 and 76).

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4/ For example, the summary sheet of CP-6 shows an underage of approximately $42,700 for teachers salaries. However, when the cost of at least 13 doctoral differentials is added for the three year proposal, an overage of over $66,000 results. Not only was the teachers' guide over, but the entire package, as finally implemented after the August 1986 settlement, was over by $3500 (TB91).

Buxbaum and, later, Kaplan proposed increasing the doctoral differential $100 per year for each year of the contract. Had the parties reached agreement on such proposals, the doctoral differential in 1985-86 would have been $1500 over the Masters +30, $1600 over the Masters +30 in 1986-87 and $1700 over the Masters +30 in 1987-88. The proposal was initially rejected by Board representatives as making more expensive guides which were already over the funding costs of the memorandum of agreement. Although Board negotiators, at other times, did seek agreement of Association negotiators to raise the doctoral differential, the parties never agreed to a specific increase in the doctoral differential (TA60-62, 123-126 and 134; TB78-79, 92 and 137; TD37, 116-117, 125-126 and 146-148).[5/]

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5/ Although Spaltoff testified that Johnson agreed to let Spaltoff unilaterally resolve the doctoral differential amount, both Johnson and Kaplan denied that such an agreement existed (TA71-72 and 79; TB109-110 and 260-262). I credit Johnson and Kaplan; their testimony is plausible under the circumstances and Spaltoff's is not. Spaltoff, Johnson and Kaplan met just before a Board meeting on October 22, 1985, after the Association ratified guides which clearly kept the doctoral differential at $1400 for each year of the proposed agreement. Spaltoff initiated the discussion, saying that the Board wanted to increase the doctoral differential and decrease the hourly increase for the intramural teachers. For Johnson and Kaplan to agree to allow Spaltoff to unilaterally change those amounts, they would have ignored the vote of their membership earlier that day, as well as extensive negotiations in the preceding week. Given the negotiations and union leadership experience of Johnson and Kaplan, I do not believe that they would give Spaltoff a free hand to set a doctoral differential and intramural hourly rates which differed from the amounts in the ratified guides. Moreover, Spaltoff's credibility in matters of Johnson's conduct is dubious. See Finding of Fact Number 6 and Footnote 6.

4. The post-memorandum discussions led to final guides printed on the Association's computer (CP-6). Spaltoff went to the Association office to pick up those guides on October 14, 1985. During the next week, Spaltoff tried but failed to reach Johnson by telephone. On October 22, 1985, the Association ratified the proposed memorandum of agreement and guides by a vote of 725 to 99 (CP-7; TD49). The Board met on October 22, 1985, but did not take a ratification vote. On October 24, 1985, the Board ratified the memorandum of agreement, the final guides prepared on the Association computer and a handwritten document providing for $65, $65 and $70 increases in the doctoral differentials for 1985-86, 1986-87 and 1987-88. Spaltoff wrote the handwritten document (CP-5) before the October 22nd meeting and did not show it to Johnson or Kaplan that night nor at any other time before these unfair practice charges (TA72-75).

5. By late October or early November 1985, Board member Robert Carrington became aware that the Board and the Association had ratified different guides with different doctoral differentials. Carrington instructed Louis Iannicello, the Board Secretary, to implement the Board's guide which raised the doctoral differential, and Iannicello did as instructed. On November 24, 1985, the Board again ratified the contract with the higher doctoral differentials. (TB14-16 and 53-55).

6. On December 9, 1985, the Association filed an unfair practice charge with the Commission alleging that the Board had

unilaterally changed the agreement between the parties concerning, among other things, the doctoral differential (Commission Docket No. CO-86-160-121; CP-8).[6/] After many settlement discussions, the parties reached a tentative agreement on all issues in June 1986 which was ratified by the Board in August 1986. The parties agreed to allow the teachers with doctorates to retain the additional $65 which they received in their doctoral differential for 1985-86, but to return the differential to $1400 in 1986-87 and 1987-88. Another feature of the settlement agreement was that Spaltoff sent a pre-approved written apology to Johnson for having accused Johnson of inebriation during a Commission settlement conference. Also, the Association agreed to withdraw its application before the State Commissioner of Education to have Robert Carrington removed from the Old Bridge Board of Education (TD65-72). During the settlement discussions, Spaltoff offered Board funding of the additional monies proposed for the doctorates in CP-5, while keeping the intramural hourly rates proposed in CP-7, plus $17,000 to be distributed as the Association wished. Chief Negotiator Kaplan declined the offer:

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6/ Regarding the dispute over the doctoral differential, Spaltoff testified that Johnson told him: "If you want to tell her [Charging Party] that I f---ed her out of $200, it's okay with me." Although he testified that he was "shocked" at the statement, Spaltoff could not remember when it was made, or if anyone else was present. Johnson denied making the statement.

I credit Johnson and not Spaltoff. Spaltoff's vague recollection of the circumstances is not consistent with the shocking statement alleged. Instead, Spaltoff's unsubstantiated allegation of Johnson's comments is consistent with other unsubstantiated and discredited Spaltoff allegations with respect to Johnson (see Finding of Fact Numbers 3 and 6).

> My position was they couldn't do it for a million dollars and I backed off to the fact that if, in fact, they would make everybody whole on a salary guide and that is go back to our original salary guide [EO-2] that was before anybody was cut $175 and go back to a hundred dollars per year [increase in doctoral differential], I would accept it. (TB140).

7. The 1985-88 collective agreement, which was not published until the resolution of all issues between the Board and the Association in August 1986, provides a 20-step four-category (BA, BA+15, MA, MA+30) guide for teachers salaries. There is no exact pattern for dollar differences between steps or across categories in the guide, other than that salaries increase as a teacher gains experience and graduate education. The guides also reflect a half step at step 19 in order to deflate a preexisting balloon step on the guide. In each of the three years, teachers with doctorates were to receive the appropriate Masters +30 step plus $1400. While the collective agreement does not reflect it, the parties agreed to allow teachers with doctoral degrees to retain $1465 for 1985-86. There were approximately fifteen teachers with doctorates covered by the collective agreement (J-1, TB252 and TC25; see Finding of Fact Number 6).

8. Teacher salary guides for two prior agreements between the parties are similarly fashioned. In 1981-82, the differential for teachers with doctorates was $1200; 1982-83--$1200; 1983-84--$1300; 1984-85--$1400 (J-2 and 3).

9. The parties stipulated that the Charging Party's salary for academic year 1984-85 was $26,492; in 1985-86--$29,740;

in 1986-87--$32,440; and 1987-88--$35,775. (TC26). It is also undisputed that the Charging Party circulated a petition seeking to limit the number of terms for the president of the OBEA, and filed charges against Johnson with the New Jersey Education Association in late 1985 (TB205-228; see also Findings of Fact in OBEA and Old Bridge Bd. of Ed., supra).

## ANALYSIS

N.J.S.A. 34:13A-5.3 provides in relevant part:

> Representatives designated or selected by public employees for the purpose 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 representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit.
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> * * *
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> 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 and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.

In Lullo v. Intern. Ass'n. of Fire Fighters, 55 N.J. 409, 429 (1970), the New Jersey Supreme Court, in emphasizing that a majority representative has a fiduciary duty to represent fairly the interests of all employees, stated that a majority representative

> ...cannot lawfully refuse to perform or neglect to perform fully and in complete good faith the duty, which is inseparable from the power of exclusive representation, to represent the entire membership of employees in the unit.

In Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Federation of Teachers, 142 N.J. Super. 486 (App. Div. 1976)(Belen), the Court explained the standard to be applied in evaluating a majority representative's conduct in a negotiations context:

> Designation of an exclusive bargaining agent under the New Jersey Employer-Employee Relations Act confers on a union broad power to represent the members of the bargaining unit and to negotiate the terms and conditions of their employment. Along with this power comes the obligation to represent all employees "without discrimination." N.J.S.A. 34:13A-5.3. This duty of fair representation of a union toward its members has received extensive development in the experience and adjudications under the National Labor Relations Act, which we find to be an appropriate guide for the interpretation of our own enactment. See Lullo v. Intern. Ass'n of Fire Fighters, supra. In Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967), the United States Supreme Court stated (at 190, 87 S.Ct. at 916): "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith."
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> * * *
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> ...[T]he mere fact that a negotiated agreement results, as it did here, in a detriment to one group of employees does not establish a breach of duty by the union. The realities of labor-management relations which underlie this rule of law were expressed in Ford Motor Co. v. Huffman, 345 U.S. 330, 73 S. Ct. 681, 97 L.Ed. 1048 (1953)[Huffman], where the court wrote:
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> > ...The complete satisfaction of all who are represented is hardly to be expected. A wide range or reasonableness must be allowed a statutory bargaining representation in servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion....[at 337-338, 73 S. Ct. at 686]
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> [142 N.J. Super. at 490-491]

See also, Humphrey v. Moore, 375 U.S. 335 (1964); Hamilton Tp. Ed. Ass'n, P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978). Accordingly, absent clear evidence of bad faith, arbitrary conduct or invidious discrimination, an employee organization may make compromises which adversely affect some members of a negotiations unit, while resulting in greater benefits for other members. See, Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986); AFT Local 481, P.E.R.C. No. 87-16, 12 NJPER 734 (¶17274 1986) adopting H.E. No. 87-7, 12 NJPER 628 (¶17237 1986); Bridgewater Raritan Ed. Ass'n., D.U.P. No. 86-7, 12 NJPER 239 (¶17100 1986) and Lawrence Tp. PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983)(Lawrence Tp. PBA). However, it is important to stress "...that all the facts of each case must be scrutinized to determine whether a breach has been proven; there are no bright line tests." City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98, 99-100 (¶13040 1982)(Union City).

> While a breach of the duty does not rise from mere disparities in wage increases or decreases, see, Belen v. Woodbridge Bd. of Ed., supra; Hamilton Tp. Ed. Ass'n, supra, a breach does exist when...the exclusive representative makes a deliberate decision in bad faith to cause a unit member economic harm. An employee representative which lacks any reason, besides the desire to punish, for its refusal to seek a compensation increase for a certain position per force operates outside the wide range of reasonableness.

See also Local #3, AFL-CIO, Cooks, Bartenders and Cafeteria Workers, P.E.R.C. No. 83-108, 9 NJPER 146 (¶14069 1983), appeal dismissed, App. Div. Dkt. No. A-1445-83T3 (5/8/84).

There can be no doubt that the Charging Party and Association President Johnson have been combatants in recent years, both before the Commission and the New Jersey Education Association (See Finding of Fact Number 9). The question is whether those disputes led to bad faith Association decisions at the negotiations table concerning Charging Party.

The inquiry must begin with an examination of the memorandum of agreement. That document, and all testimony concerning it, indicates a Board-Association commitment to providing greater percentage increases to lower paid employees than to higher paid employees represented by the Association. (See Finding of Fact Numbers 2 and 3.) The memorandum expressed this principle by providing a maximum percentage for those at the top of the salary guide of approximately 2% less per year than the increases provided for in the memorandum. The inevitable result of this clause was that employees at the lower end of the guide would receive salary increases of greater percentages than the 8.3, 8.3 and 8.7 provided in the agreement. Because the memorandum provided only this guideline and did not delineate salary increases by position, salary guide construction was complex, and resulted in varying percentage and dollar increases for employees depending on their guide locations (Finding of Fact Number 7).

It is within this context that the Charging Party's claims must be examined. She does not allege, nor does the record support, a claim that the Charging Party or any teacher with a doctorate

received an inadequate raise or one inconsistent with the memorandum of agreement. Indeed, the parties have stipulated that the Charging Party received raises totaling $9,283 during the three year agreement (Finding of Fact Number 9). Instead, the Charging Party's claim is that the Association negotiated in bad faith when it proposed and ratified final guides which did not include an increase in the doctoral differential during the three year contract and/or that it negotiated in bad faith when it refused an unfair practice charge settlement offer increasing the doctoral differential $200 over the three year period. I reject both arguments.

There is no testimony to suggest that the doctoral differentials ratified by the Association were proposed to harm the Charging Party. She was in no way singled out; the other 13 to 15 teachers with doctorates were to receive the same differential. In addition, both the Association and the Board representatives testified that Kaplan and Buxbaum had at different times proposed increases in the doctoral differential (Finding of Fact Number 3). There simply was not enough money to fund increases in the doctoral differential and still meet the joint goal of improving salaries at the lower end of the guide. Instead, the Association acted within the wide range of reasonableness permitted it and in good faith made certain concessions in order to obtain quality increases for the entire unit, with special attention to the lower paid unit members. <u>Belen</u> and <u>Union City</u>. Indeed, the substantial stipend of $1400 was maintained; even if it were eliminated, the Association would not

commit an unfair practice unless bad faith were proven by a preponderance of the evidence. Lawrence Tp. PBA. Finally, maintaining but not increasing the differential had already occurred in a recent contract (see Finding of Fact Number 8). Thus, teachers with doctorates received salary increases in the 1985-88 contract consistent with the memorandum of agreement and not inconsistent with past compensation patterns. There was no improper motivation; Association representatives sought increases in the doctoral differential but ultimately yielded in favor of other demands. Finally, the proposed agreement was ratified overwhelmingly by Association members; there is no evidence that their decision was tainted with improper motivation to harm the Charging Party.

When the dispute between the Board and the Association arose concerning the doctoral differential, as well as intramural hourly rates, the Association acted responsibly in filing and ultimately resolving an unfair practice charge before the Commission. The parties ratified different guides (Finding of Fact Number 4); the Association was entitled to pursue its position that it did not agree to the Board's guide and would not accept its increased doctoral differential.[7/] The Commission has found that a

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7/ While Board member Spaltoff claimed that Johnson agreed to let him unilaterally set the doctoral differential, I have discredited that testimony (Finding of Fact Number 3). Even if that testimony were credited, it would not establish Charging Party's entitlement to the doctoral differential

Footnote Continued on Next Page

majority representative need not accept a unilateral raise for any employee in its negotiations unit, since a unilateral raise "tends to undermine the [union's] exclusive status as majority representative..." Essex County College, P.E.R.C. No. 87-17, 12 NJPER 736 (¶17275 1986). Moreover, given the process which occurred during the week after the memorandum of agreement was signed, Chief Negotiator Kaplan was understandably upset by a settlement offer described in Finding of Fact Number 6. Having cut the proposed salaries for teachers by an average of $175 per teacher, he would not countenance the suggestion that teachers with doctorates should receive a $200 differential increase over the three year period. Indeed, the ultimate resolution of the contract, which allowed teachers with doctorates to retain a $65 differential increase for 1985-86 unilaterally granted by the Board, cannot be viewed as anything but good faith action by the Association. Finally, since the ultimate agreement costed out over the funding level required for the memorandum of agreement (Finding of Fact Number 3), the Association cannot be claimed to have acted in bad faith by agreeing to it.

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7/ Footnote Continued From Previous Page

created by Spaltoff. The Association ratified a different guide, never ratified the Board's guide, and never cloaked Johnson with apparent authority to bind it to an unratified agreement. Compare Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975) and East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279 (1976).

In the final analysis, the existence of bad blood between a union president and a unit member does not, by itself, prove bad faith as to all actions by a union which may adversely effect the unit member. Here, it is difficult to discern an adverse effect on the Charging Party; the contract agreed to by the Association provided the Charging Party with dollar increases in excess of those gained by most unit members; it maintained a significant differential for her educational level; and it treated Charging Party identically to others similarly situated (compare Union City, where the charging party received no raise while all other unit members received substantial raises in interest arbitration where the majority representative's final offer was implemented). Even if an adverse effect can be identified, the Charging Party has not demonstrated that the Association acted in bad faith to harm the Charging Party; instead, the evidence presents reasonable Association goals and actions. Accordingly, I recommend that the Commission find that the Charging Party has not proven by a preponderance of the evidence that the Association violated its duty of fair representation.

## RECOMMENDED ORDER

I recommend that the Commission dismiss the Complaint.

Mark A. Rosenbaum
Hearing Examiner

Dated: June 22, 1988
Trenton, New Jersey