

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

MADISON BOROUGH BOARD OF
EDUCATION,

Respondent,

-and-

DOCKET NO. CO-78-101

MADISON TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices, declines to issue a complaint with respect to a charge which alleges that the Board's initial decision to assign teachers bus duty, and subsequent to the arbitrator's award, its continued failure to negotiate in good faith concerning this additional duty, constituted a unilateral change in terms and conditions of employment, in violation of both the Act and the parties' collective negotiations agreement. The dispute was initially submitted to arbitration pursuant to the grievance/binding arbitration procedure contained in the parties' contract. The Charging Party claims that the arbitrator's award required the Board to negotiate the employment conditions of teachers assigned to bus duty, but that the Board has not negotiated in good faith. The Director concludes that, consistent with the Commission's policy of deferral to arbitration, this matter should more appropriately be brought as a proceeding to confirm and enforce an arbitration award pursuant to N.J.S.A. 2A:24-7.

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Appearances:

For the Respondent
Metzler Associates
(Stanley C. Gerrard, Consultant)

For the Charging Party
New Jersey Education Association
(John W. Davis, Field Representative)

REFUSAL TO ISSUE COMPLAINT

On November 14, 1977, an Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by the Madison Teachers Association (the "Association"), alleging that the Madison Borough Board of Education (the "Board") was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically

N.J.S.A. 34:13A-5.4(a)(1), (5) and (7). 1/

The Unfair Practice Charge alleges that prior to November 1, 1976, the elementary school teachers were not required to perform any bus duty, the building principals having been assigned this function. In November, the Board unilaterally instituted a duty roster assigning teachers, on a rotating basis, to bus duty after the completion of the school day.

Pursuant to Article I of the teachers' contract a grievance was filed and pursued through arbitration. The Association asserts that "the award of the arbitrator is stated as follows:

1. The grievance is arbitrable.
2. The contract was violated with the Board unilaterally assigned school unit members to bus duty.
3. The parties shall negotiate, before the start of the school year, the conditions of employment for elementary school unit members assigned to bus duty."

The Association alleges that the Board's initial assignment of bus duty and, subsequent to the arbitrator's award, its continued failure to negotiate in good faith concerning this additional duty, constituted a unilateral change in terms and conditions of employment, in violation of both the Act and the parties' contract.

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

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

The Commission has adopted a policy of deferring unfair practice charges to the parties' contractual binding arbitration procedures where the subject matter of the charge relates to a violation of the parties' contractual agreement and where the

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice...Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any named designated agent thereof..."

^{3/} N.J.A.C. 19:14-2.1.

^{4/} N.J.A.C. 19:14-2.3.

dispute can reasonably be expected to be fully resolved under the parties' grievance/binding arbitration procedures. In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1976); In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 48 (1975); In re City of Camden, E.D. No. 76-13, 1 NJPER 65 (1975); In re Board of Education of East Windsor Regional School District, E.D. No. 76-6, 1 NJPER 59 (1975). Where an arbitrator's award has been issued, and there has been an alleged failure to abide by the arbitrator's award, the Commission, consistent with its policy of deferral to arbitration, has held that the matter should more appropriately be brought as a proceeding to confirm and enforce an arbitration award, pursuant to N.J.S.A. 2A:24-7. In re Matawan Regional Board of Education, P.E.R.C. No. 77-61, 3 NJPER 163 (1977); In re State of New Jersey (Stockton State College), supra.

The dispute underlying the instant Unfair Practice Charge was submitted as a grievance which alleged that the Board's unilateral implementation of bus duty constituted a violation of the parties' contract. The Association submitted the dispute to arbitration and obtained an award requiring negotiations.

The Association's Charge alleges that the Board has failed to negotiate in good faith notwithstanding the arbitrator's award directing negotiations over the impact of teacher assignment to bus duty. Under these circumstances the Matawan and Stockton cases, supra, are controlling. The Association should seek confirmation and enforcement of the Arbitrator's award in the

appropriate forum as provided in N.J.S.A. 2A:24-7.

Accordingly, consistent with the Commission's deferral to arbitration policy, the undersigned declines to issue a complaint herein. 5/

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: April 20, 1978
Trenton, New Jersey

5/ The undersigned additionally notes that the filing of the Charge on November 14, 1977, relating to the claimed November 1976 unilateral institution of bus duty assignment, was untimely. N.J.S.A. 34:13A-5.4(c) limits the filing of charges to events occurring within the six months immediately preceding such filing. The Commission has determined that the filing of a grievance does not toll the unfair practice statutory limitation. See In re State of New Jersey (Stockton State College) P.E.R.C. No. 77-14, aff'd sub. nom. State v. Council of N.J. State College Locals, 153 N.J. Super. 91 (App. Div. 1977), pet. for cert. pending.