

D.U.P. NO. 96-9

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

In the Matter of

FAIR LAWN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-96-90

FAIR LAWN SCHOOLS CUSTODIANS ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the Board violated N.J.S.A. 34:13A-5.4(a)(5) where the Board refused to process a grievance to arbitration and the parties' grievance procedure permitted the Association to automatically proceed to binding arbitration.

D.U.P. NO. 96-9

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

In the Matter of

FAIR LAWN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-96-90

FAIR LAWN SCHOOLS CUSTODIANS ASSOCIATION,

Charging Party.

Appearances:

For the Charging Party,  
Waters, McPherson, McNeill, attorneys  
(Michael A. Sirgado, of counsel)

REFUSAL TO ISSUE COMPLAINT

An unfair practice charge was filed with the Public Employment Relations Commission on September 29, 1995, by the Fair Lawn Schools Custodians Association against the Fair Lawn Board of Education alleging that the City engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act); specifically N.J.S.A. 34:13A-5.4(a)(5).<sup>1/</sup>

---

<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: "(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."

The Commission has authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that final proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

For the reasons stated below, the Commission's complaint issuance standard has not been met.

The Association alleged that the Board violated the Act when it refused to process Frank Osterhoudt's grievance to arbitration, the final step of their grievance procedure.

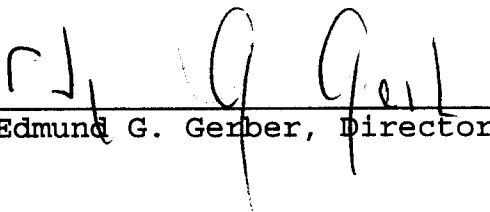
However, the refusal of an employer to respond to a grievance, or to deny the grievance at any step of the grievance procedure, is not in and of itself an unfair practice where the employee representative can automatically proceed to a higher level of the grievance procedure, including binding arbitration.... N.J. Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); State of New Jersey, P.E.R.C. No. 89-39, 14 NJPER 656 (¶19277 1988); Tp. of Rockaway, D.U.P. No. 83-8, 8 NJPER 644 (¶13309 1982); State of New Jersey, D.U.P. No. 77-3, 2 NJPER 373 (1976); City of Pleasantville, D.U.P. No. 77-2, 2 NJPER 372 (1976).

Article III of the parties' contract contains a grievance procedure that permits an Association to take a grievance to arbitration without the consent of the Board. Accordingly, the

Association has not alleged an unfair practice within the meaning of the Act.

Therefore, the complaint issuance standard has not been met, and I decline to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
\_\_\_\_\_  
Edmund G. Gerber, Director

DATED: October 19, 1995  
Trenton, New Jersey