

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

UNION CITY BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-83-240

UNION CITY EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an unfair practice charge alleging that the Board of Education had committed an unfair practice when it refused to place two teaching staff members, who had obtained advanced educational credits on higher salary guides pursuant to Article 29(E)(4) of the parties' collective negotiations agreement. The facts indicate that the parties' dispute is essentially grounded in their different interpretation of contractual language. In accordance with In re State of New Jersey (Dept./Human Services), D.U.P. No. 84-11, 9 NJPER 681 (¶ 14299 1983), such matters are appropriately addressed in traditional forums for the adjudication of contract violations.

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Appearances:

For the Respondent
Herbert Klitzner, attorney

For the Charging Party
Katzenbach, Gildea & Rudner, attorneys
(Arnold M. Mellk of counsel)

REFUSAL TO ISSUE COMPLAINT

On March 10, 1983, and amended on May 17, 1983, the Union City Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the Union City Board of Education ("Board") alleging that 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. ("Act"), specifically §§ 5.4(a)(1) and (5). ^{1/}

^{1/} N.J.S.A. 34:13A-5.4(a) 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. (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."

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 a complaint shall not issue.

The dispute in this matter relates to the Association's claim that certain unit members have obtained post-graduate education credits but that the Board has declined their requests to be placed on higher salary scales contained in the parties collective negotiations agreement. On December 12, 1980, Keith Bachman,

^{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 designated agent thereof..."

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

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

a teaching staff member, requested that the Board place him at a higher salary guide (BA+15) pursuant to Article 29(E)(4) of the collective negotiations agreement between the Board and the Association because he had completed a number of law school credits. ^{5/} At some unspecified time thereafter the Board rejected Bachman's request.

Subsequently, a grievance over the issue was filed and, on November 16, 1982, an advisory arbitration hearing was held. On December 14, 1982, the arbitrator issued his award in favor of the Association and grievant. ^{6/} However, on December 29, 1982, the Board rejected the award. The instant charge followed, and was amended on May 17, 1983, to allege that a second teacher had been entitled to placement on a BA+30 salary guide since September 1, 1981.

By letter dated August 22, 1983, the Director of Unfair Practices advised the parties that it appeared that the operative event giving rise to the unfair practice charge occurred when the Board allegedly failed to place the two affected unit members on an appropriate step of the BA+ salary guides in September 1981. Since this event took place well before the six months preceding

^{5/} Article 29(E)(4) provides: "A teacher shall notify the Superintendent in writing, no later than January 10th, if he expects to have accumulated sufficient credits to be advanced to another salary level for the ensuing school year. If a teacher has a degree conferred as of October, he shall be adjusted to the salary schedule for that degree as of the following February 1, and his adjustment to the new salary schedule will be reflected in his February 15 salary check.

^{6/} The arbitrator rejected the Board's assertion that the contractual benefit was not intended to apply where the post-graduate credits have no bearing on the teacher's subject matter.

the filing of the charge, and since there was no allegation that the Association was in any way prevented from filing a timely charge, the Director afforded the parties the opportunity to address, by way of briefs, the Association's contention that the asserted unfair practices are of a continuing nature and are therefore actionable notwithstanding the limitations set forth in N.J.S.A. 34:13A-5.4(c).

On August 31, 1983, the Association submitted a brief in which it cited inter alia, North Plainfield Ed. Ass'n. v. Bd. of Ed. of the Borough of North Plainfield, App. Div. Docket No. A-4583-81T3 (6/20/82), an unpublished Appellate Court decision dealing with an alleged violation of an individual's statutory rights, which the court determined was of a continuing nature such that the applicable statutory limitation period was not applicable.

However, the decision here need not be based on timeliness or the concept of a continuing violation. ^{7/} In In re State of New Jersey, Dept. of Human Services, D.U.P. No. 84-11, 9 NJPER ____ (¶ ____ 1983), a matter recently decided, the Director of Unfair Practices refused to issue a complaint with respect to an unfair practice charge alleging a violation N.J.S.A. 34:13A-5.4(a)(5) since the essence of the dispute involved the parties disagreement

^{7/} The instant case may differ from North Plainfield in that here the alleged violation relates to a claim of contract entitlement rather than a direct statutory entitlement. In this regard the instant matter may be likened to the circumstances involved in In re Hudson Cty., H.E. No. 80-46, 6 NJPER 289 (¶ 11136 1980), aff'd P.E.R.C. No. 81-15, 6 NJPER 787 (¶ 11199 1980), in which a public employer, over a period of time, was alleged to have failed to pay annual salary increments pursuant to the parties' contract. In recommending dismissal of the complaint, the Hearing Examiner rejected the notion of a continuing violation.

over the interpretation of contract provisions. It appears to the undersigned that the Association's charge raises a dispute which is purely contractual in nature concerning the different interpretation given Article 29(E)(4) by each party. The Association's charge, and the Board's defenses, are contractually rooted. Accordingly, the appropriate procedures for resolving the instant dispute are those that are traditionally utilized for seeking contract enforcement, not through unfair practice procedures.

Based on the above analysis, and for the reasons more fully set forth in Human Services, supra, the undersigned declines to issue a complaint with respect to the instant charge. ^{8/}

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS



Joel G. Scharff, Administrator

DATED: January 3, 1984
Trenton, New Jersey

^{8/} The undersigned does not view the Board's rejection of the arbitrator's opinion and award as a repudiation of the contract. The Board's right not to accept the opinion and award is consistent with the concept of advisory arbitration.