

D.U.P. NO. 87-6

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

In the Matter of

THE BOARD OF EDUCATION OF
PASSAIC VALLEY,

Respondent,

-and-

Docket No. CO-87-120

PASSAIC VALLEY EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint in an Unfair Practice Charge filed by the Passaic Valley Education Association. The charge was originally filed in the Superior Court of New Jersey and was transferred to the Commission on motion of the Board. In accordance with New Jersey Department of Human Services and C.W.A., P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Director concluded that the parties' dispute herein essentially involves differing interpretations of contract provisions and is more appropriately resolved by an arbitrator.

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Appearances:

For the Respondent,
Aron, Salsberg & Rosen
(Frank N. D'Ambra, of counsel)

For the Charging Party,
Bucceri & Pincus
(T.J. Baldwin Le-Clair, of counsel)

REFUSAL TO ISSUE COMPLAINT

On October 23, 1986, the Public Employment Relations Commission (Commission) received correspondence from counsel for the Passaic Valley Education Association (Association) concerning the transfer of Superior Court Docket No. L-0055793-86, Passaic Valley Education Association v. The Board of Education of Passaic Valley to the Public Employment Relations Commission (Commission).^{1/}

^{1/} The correspondence included a Complaint and Answer with Plaintiff's brief opposing the motion to transfer filed in Superior Court, Law Division, Passaic County.

The Association originally brought this action in Superior Court on May 14, 1986. The Board of Education of Passaic Valley ("Board") moved to have Count II of the complaint transferred to this Commission. Pursuant to the Board's motion, the Honorable Nicholas G. Mandak, A.J.S.C., signed an order transferring Count II to the Commission on October 6, 1986. We shall, therefore, treat Count II of the Association's Superior Court Complaint as an unfair practice charge filing with the Commission (Docket No. CO-87-120).

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 me 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/}

^{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 charged 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

However, if this standard has not been met I may decline to issue a complaint.^{4/}

In Count II of its Superior Court Complaint, the Association alleged that the Board is the public employer of certain teachers, that the Association is exclusive majority representative of a negotiations unit comprised of certain certificated personnel, and that the Board and the Association are parties to a collective negotiations agreement which establishes terms and conditions of employment for unit employees for the period from June 1, 1983 through June 30, 1986. The Association contends that the Board breached the parties' collective negotiations agreement by refusing to recognize that guidance counsellors fell within the contractual definition of "teacher" and were thus entitled to the benefits accorded to teachers by the contract. More specifically, the Association alleged that the Board had limited guidance counsellors to 15 minutes of daily preparatory time; the Association argues that the contract provided for 45 minutes of preparatory time each day.^{5/}

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

5/ One of the issues which the parties raised for the Commission's consideration was the timeliness of the Association's filing with the Commission. In Count II of its Superior Court Complaint, the Association complained about the Board's denial of preparatory time to guidance counsellors. This dispute derived from a directive issued by the Board and grieved by the Association on March 12, 1986. Thus, the issuance and implementation of the directive occurred some time prior to March 12, 1986. This matter was submitted to

The Association focused on three contractual provisions: (1) Article IA, which specifies "Guidance Counsellors" as certificated personnel under the contract and within the scope of the Association's unit; (2) Article IB, which defines "teachers" as "...all certificated personnel under contract represented by the Association in the negotiating unit as above defined..."; and (3) Article 7D, which provides: "...In addition to their lunch period, teachers will have duty-free preparation time which will average forty-five (45) minutes per day, per week."

The Board argues that the allegations contained in Count II of the Association's Complaint constitute unfair practice charges over which the Commission has exclusive jurisdiction. Accordingly, the Board asserts that this matter properly belongs before the Commission, not the Superior Court.

The Association argues that its Superior Court Complaint involves the interpretation of several clauses of the parties' collective negotiations agreement. No allegations of unfair labor practice were made in the Association's Complaint. The Association

5/ Footnote Continued From Previous Page

the Commission for consideration on October 23, 1986. Accordingly, the earliest events cognizable as unfair labor practices in these circumstances must have occurred on or after April 23, 1986. See, N.J.S.A. 34:13A-5.4.

Although the allegations of the Association's Complaint which address events that occurred prior to April 23, 1986 may not be cognizable as violations under the Act, the denial of prep time is an ongoing violation. Thus, the events occurring on or after the April 23, 1986 date could be the subject of a Commission complaint.

contends that contract interpretation has always been the province of the courts.

In New Jersey Department of Human Services and C.W.A., P.E.R.C. No. 84-148, 10 NJPER 419 (¶ 15191 1984) ("Human Services"), the Commission refused to issue an unfair practice complaint where the charge alleged no violation of the Act but rather, merely a violation of the parties' collective negotiations agreement.

In Human Services, the Commission stated:

We conclude that a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures. We base this conclusion primarily on our interpretation of the Act and the legislative policy expressed therein favoring the use of negotiated grievance procedures for handling contractual disputes.^{5/}

^{5/} In reaching this conclusion, we reaffirm the vitality of the following policy statement from In re Borough of Palisades Park, D.U.P. No. 78-71, 3 NJPER 238 (1977): The Commission does not view its role as the enforcer of collective negotiations agreements. Such a matter is appropriately the concern of an arbitrator, or alternatively the courts upon a suit for contract enforcement. In certain limited situations where a contract has been breached, the Commission will find that such a breach has also constituted a statutorily prohibited unilateral change in terms and conditions of employment without prior negotiations and thereby find that an unfair practice has occurred. Id. (citations omitted).

...allegations setting forth at most a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction. An employer which negotiates terms and conditions of employment as set forth in a collective negotiations agreement, which agrees to specific grievance procedures for the resolution of contractual disputes, and which is willing to abide by those negotiated procedures, does not "refuse to negotiate in good faith" simply because its interpretation of an unclear contract clause may ultimately prove to be mistaken. Human Services at 421-422. (emphasis added).

However, the Commission further determined that a breach of contract claim may rise to the level of a refusal to negotiate in good faith. The Commission stated:

...if the contract claim is sufficiently related to specific allegations that an employer has violated its obligation to negotiate in good faith, we would certainly have the authority to remedy that violation under subsection (a)(5). Human Services at 422. (emphasis added).

Most recently, in Perth Amboy Board of Education, P.E.R.C. No. 87-29, 12 NJPER ____ (¶ ____ 1986), the Commission affirmed the my refusal to issue a complaint on an unfair practice charge which involved essentially a contract dispute. The Commission held:


We do so because AFT's claim is entitlement to salary differentials pursuant to the collective negotiations agreement. The AFT does not seek negotiations over differentials but enforcement of the existing contract which allegedly requires payment. Thus, the decision whether or not the Board is required to pay differentials is more appropriately reserved to the parties' negotiated grievance procedure. In New Jersey Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶ 15191 1984) we noted that "policies reflective of the Act militate against permitting litigation of mere breach of contract claims in the guise of unfair practice proceedings." Id. at 422. Perth Amboy at 12 NJPER ____.

Here, the Association argues that the disputes are over contractual interpretation and are similarly matters for the court.

Based upon all of the foregoing, we conclude that the parties' dispute herein essentially involves differing interpretations of contractual provisions. The Association has not made specific allegations -- or any allegation -- that the Board has violated its duty to negotiate in good faith. The Board has not sought to repudiate its contract with the Association. The parties' dispute involves whether the employee classification of guidance counsellor fails within certain contract provisions which entitle these employees to certain contract benefits. This is the type of dispute which is more appropriately resolved by an arbitrator or the courts, in a suit for contract enforcement. It appears that this matter is not appropriate for an unfair practice complaint.

Accordingly, I decline to assert jurisdiction over this matter and will not issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: December 17, 1986
Trenton, New Jersey