

D.U.P. No. 2006-6

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

In the Matter of

TRENTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2006-120

TRENTON EDUCATIONAL SECRETARIES  
ASSOCIATION/NJEA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that the Board violated the provisions of 5.4a(1), (3) and (5) of the Act when it placed a newly hired unit employee at the "wrong" step of the contractual salary guide. The Director found that the dispute is essentially one of contract interpretation, and therefore, not appropriate for Complaint issuance under New Jersey State Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Additionally, the Director found no factual allegations in the charge to support the 5.4a(3) or independent a(1) claim.

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Appearances:

For the Respondent,  
Sumners George, attorneys  
(Thomas W. Sumners, Jr., of counsel)

For the Charging Party,  
James H. Loper, NJEA Field Representative

REFUSAL TO ISSUE COMPLAINT

On November 3, 2005, the Trenton Educational Secretaries Association/NJEA (TESA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the Trenton Board of Education (Board). TESA alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically 5.4a(3) and (5)<sup>1/</sup> when it hired

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act." and "(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  
(continued...)

Nicole Brown as a secretary in the Human Resources Department and unilaterally placed her at a higher level on the salary guide than TESA thought was permitted by the parties' collective negotiations agreement. TESA alleges that Ms. Brown was given credit for obtaining sixty (60) college credits even though she does not have any college credits, that the Board allegedly improperly counted Brown's technical school credits toward salary placement, which TESA argues, is not specifically permitted by the collective negotiations agreement. TESA further alleges that the Board negotiated an individual contract with Ms. Brown in violation of the parties' agreement.

The Board denies the charges. It argues that the Commission does not have jurisdiction over this dispute because the charges allege a mere breach of the collective negotiations agreement, and such a contract interpretation dispute should be pursued through the parties agreed upon grievance procedures. Further, it asserts that nothing in the parties' collective agreement prevents it from placing Ms. Brown at the salary guide level that it did.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act.

N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. The Commission has

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1/ (...continued)  
in that unit, or refusing to process grievances presented by the majority representative."

delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. Based upon the following, I find that the complaint issuance standard has not been met.

TESA and the Board are parties to a collective negotiations agreement which covers the period from July 1, 2001 through June 30, 2005. Article 1 of the agreement sets forth the positions represented by TESA. Ms. Brown's position as a secretary in the Human Resources Department is included in the unit.

Article 10 of the parties' agreement, SUPER-MAXIMUM AND LONGEVITY, at paragraphs A and B provides:

- A. All employees who have earned 30, 60, 90 credits shall be placed on the appropriate step of the salary guide. Credits must be in the approved work-related areas.
- B. To encourage further education pursuits, members shall be reimbursed up to the current College of NJ in-state rate for twelve (12) college credits per year that relates to an employment opportunity in the Trenton School District. Prior approval must be obtained by the Superintendent of Schools before courses are taken.

Brown was hired by the Board on April 25, 2005, and provided the Board with proof that she had completed 680 hours of secretarial school training (technical school). That education initially resulted in Ms. Brown being placed at the level of sixty (60) credits on the salary guide, but then the Board realized it was the equivalent of thirty (30) credits and it reduced her salary to the corresponding level.

TESA asserts that Brown does not have any college credits, which the Board acknowledges. TESA further asserts there is nothing in the parties' agreement which allows technical school credits to count towards salary placement and thus the Board negotiated an individual contract with Ms. Brown. However, the Board asserts that Ms. Brown's technical school credits may be used for placement on the salary guide. The above-quoted paragraph B in Article 10 of the parties' agreement specifically mentions "college credits" for purposes of reimbursement by the Board. However, the above-quoted paragraph A of Article 10 mentions only "credits" when discussing credits for purposes of salary guide placement, and the parties' collective agreement is silent as to both the definition of "credits" and how to determine whether credits are "in the approved work-related areas."

#### **ANALYSIS**

TESA maintains that nothing in the parties' collective agreement supports advanced placement on the salary guide for technical school credits and, therefore, the Board negotiated an "individual contract" when it hired Ms. Brown. TESA included a copy of Article 10 of the collective agreement in support of its argument. The Board relied on the same contract clause in determining that Ms. Brown's technical school credits qualified her for advancement on the salary guide.

In State of New Jersey (Department of Human Services),  
P.E.R.C. No. 84-148, 10 NJPER 419, 421 (¶15191 1984), the  
Commission held 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.

In the instant case, the parties have, at best, a good faith dispute over the interpretation of Article 10, Paragraph A, of their existing contract. Under Human Services, when both parties reasonably rely upon language contained in the collective agreement for their actions, the Commission will not entertain an alleged violation of 5.4a(5) of the Act. Here, both TESA and the Board agree that Brown is receiving a salary amount which corresponds to a level on the salary guide. The parties disagree only over whether Ms. Brown's technical school credits entitle her to the particular salary guide level at which she has been placed. That dispute may be resolved through resort to the agreement's grievance procedure. See Ocean County College, D.U.P. No. 2001-10, 27 NJPER 56, 57 (¶32026 2000); See Human Services at 421.

Since both parties rely on their respective interpretations of Article 10, paragraph A of the collective agreement, I find that this dispute over Brown's placement represents nothing more than a contractual dispute and an alleged breach of contract. See Ocean County College at 57-58.

TESA's claim of direct-dealing between the Board and Brown appears to be nothing more than supposition.

Where a breach of contract claim is asserted in an unfair practice charge, we examine the allegations to determine whether there is a sufficient connection between the duty to negotiate in good faith and the alleged contractual violation in order to determine whether to issue a complaint. Middletown Township Bd. of Ed., D.U.P. No. 91-30, 17 NJPER 352 (¶22161 1991); See Human Services at 423. Examples of situations where a breach of contract claim bears a sufficient relationship to an alleged violation of the Act so as to warrant the processing of a charge and the possible issuance of a complaint are:

- (1) The employer repudiates an established term or condition of employment.
- (2) The employer decides to abrogate a contract clause based on its belief that the clause is outside the scope of negotiations.
- (3) The contract clause is so clear that an inference of bad faith arises from a refusal to honor it.
- (4) Factual allegations indicate that the employer changed the parties' past and consistent practice in administering the disputed clause.
- (5) Specific allegations of bad faith over and above mere breach of the collective negotiations agreement are present.
- (6) Breach of the agreement places the policies of the Act at stake. [17 NJPER at 352]

Here, TESA has not alleged any of the above. There is no charge that the Board repudiated Article 10 of the contract, and no claim or facts alleged that the Board changed the parties' past and consistent practice in administering the disputed clause.

Furthermore, the definition of "credits" in Article 10, paragraph A of the agreement can reasonably be disputed, thus negating any bad

faith inference arising from a refusal to honor TESA's interpretation.

Finally, the facts as alleged do not bring the charge within one of the Human Services exceptions in which there is a sufficient connection between the contractual dispute and the duty to negotiate in good faith to issue an unfair practice complaint. Therefore, I find that the parties' dispute is contractual and the Board's actions do not constitute a violation of 5.4a(5) of the Act.

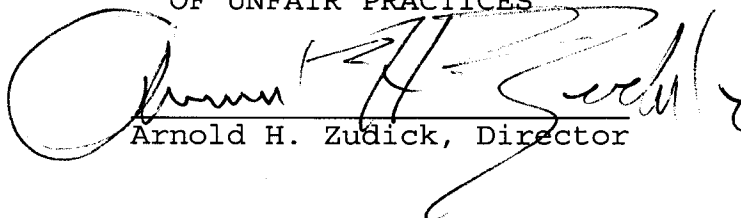
Additionally, there are no specific factual allegations supporting TESA's claim of a 5.4a(3) violation. See Human Services at 423, Footnote 15.

Based upon the above facts and analysis, I find the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.

**ORDER**

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: March 21, 2006  
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.**

**Any appeal is due by April 3, 2006.**