

D.U.P. NO. 95-29

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

In the Matter of

SOUTH HUNTERDON REGIONAL
BOARD OF EDUCATION,

Respondent,

-and-

Docket Nos. CO-94-208
and CO-94-219

SOUTH HUNTERDON REGIONAL
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint and dismisses unfair practice charges filed by the South Hunterdon Regional Education Association against the South Hunterdon Regional High School Board of Education. The Association alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when the superintendent allegedly changed the work hours of the secretary to the child study team and refused to process a grievance concerning this change. The Director finds that the allegation concerning the change of hours is a claimed breach of contract, and not an unfair practice. State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The Director also finds that the Board's alleged refusal to respond to a grievance at an intermediate step of the grievance procedure, in and of itself, is not an unfair practice, where, as here, the parties' agreement provides for a self-executing grievance procedure which culminates in binding arbitration.

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Appearances:

For the Respondent,
Green & Dzwilewski, attorneys
(Allan P. Dzwilewski, of counsel)

For the Charging Party,
Thomas G. Myers, Field Representative

REFUSAL TO ISSUE COMPLAINT

On January 6 and 18, 1994, the South Hunterdon Regional Education Association filed unfair practice charges, Docket Nos. CO-94-208 and CO-94-219, respectively, with the Public Employment Relations Commission against the South Hunterdon Regional High School Board of Education. The charges allege that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-5.4(a) (1) and (5) of the Act^{1/} when the superintendent allegedly changed the work hours of the secretary to the child study team and refused to process a grievance concerning this change.

We have conducted an investigation and make the following findings.

The Board and Association have a collective negotiations agreement effective from 1992 to 1995, covering terms and conditions for teachers and secretaries employed by the Board. Contract Article XXVIII, sections E and F states:

E. The work week for these full-time employees shall be thirty-seven and one-half (37 1/2) hours per week. Exceptions to this, as necessary, may be made by the superintendent on an equitable basis.

F. A daily duty schedule showing reporting time, time for lunch, coffee breaks, and dismissal time for these employees shall be prepared by the superintendent. He shall notify these employees of their individual schedules no later than September 20 of each year.

The contract also contains a self-executing grievance procedure at Article III, which allows the Association to notify the superintendent of its intent to send a grievance to binding arbitration, in the event no satisfactory resolution is reached after the third step of the grievance procedure.

^{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, 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 in that unit, or refusing to process grievances presented by the majority representative.

This case presents two issues: did the Board violate the Act by changing the child study team secretary's work hours and did the Board violate the Act by failing to process the grievance filed concerning the change?

The parties' agreement appears to permit the superintendent to set the work hours for full-time secretaries, within 37 and 1/2 hours per week. Where a change is permitted by the parties' agreement, the employer is not obligated to negotiate prior to making a change; there is no violation of the Act in such circumstances. See, Kittatinny Bd. of Ed., P.E.R.C. No. 93-34, 18 NJPER 501 (¶23231 1992); Manalapan-Englishtown Bd. of Ed., D.U.P. No. 93-41, 19 NJPER 292 (¶24151 1993). Here, it appears that contract clause XXVIII permits the Board to set secretaries' work hours within the parameter of a 37-1/2 hour work week. Accordingly, it does not appear that an unfair practice occurred.

However, even if the Board had made an improper change in the child study team secretary's hours, in State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission has held that where there is a claim of a contract violation, the Commission will not entertain an allegation of a violation of subsection (a)(5) if an employer reasonably relies upon contract language for its actions and does not repudiate the contract. Here, it appears that there is a good faith dispute over the interpretation of contract terms. Such a claim is not an unfair practice. Hardyston Tp. Bd. of Ed., D.U.P. No. 94-46, 20 NJPER 266

(¶25132 1994); Tp. of Barnegat, D.U.P. No. 91-19, 17 NJPER 172 (¶22071 1992); State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

The Commission has repeatedly held that assertions of an employer's refusal to respond to a grievance, or the employee's improper treatment of a grievance at an intermediate step of the grievance procedure, in and of itself, is not an unfair practice, when the contract provides for a self-executing grievance procedure which culminates in binding arbitration. See State of New Jersey (Ancora Psychiatric Hospital), D.U.P. No. 95-5, 20 NJPER 377 (¶25189 1994); State of New Jersey, D.U.P. 88-9, 14 NJPER 146 (¶19058 1988); City of Trenton, D.U.P. 87-7, 13 NJPER 99 (¶18044 1986); Tp. of Millburn, D.U.P. No. 81-24, 7 NJPER 370 (¶12168 1981); New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986).

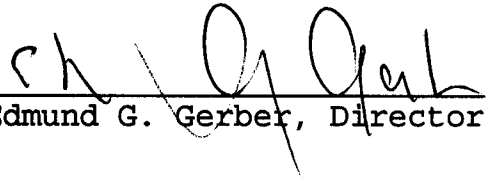
Here, Article III of the parties' contract provides for a self-executing grievance procedure culminating in binding arbitration. The contract permits the Association, if not satisfied with the results at the third step of the grievance procedure, to simply proceed to arbitration.

Based upon all of the above, I find that these charges do not state a cause of action under N.J.S.A. 34:13A-5.4. Rather, the substance of the claim is that the Board breached a collective negotiations agreement or failed to process a grievance under circumstances where the Association could have invoked its right to

binding grievance arbitration. Accordingly, the charges do not meet the Commission's complaint issuance standard and, therefore, I decline to issue a complaint and dismiss them in their entirety.

N.J.A.C. 19:14-2.1.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: March 14, 1995
Trenton, New Jersey