

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

In the Matter of

EAST WINDSOR REGIONAL TEACHERS
AIDES & TEACHERS ASSISTANTS
ASSOCIATION,

Respondent,

-and-

DOCKET NO. CE-78-19

EAST WINDSOR BOARD OF
EDUCATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge claiming that the majority representative interfered with the employer's selection of its representative for grievance adjustment and/or negotiations. The Charge related to the submission of a memorandum by the Association to a Board principal, and circulated to other Board administrators, whom the Board asserted are not authorized to resolve the complaints in the memorandum. The Director notes that there is no claim that the Association insisted on a response from the Board to its complaints, or that the Board administrators were prevented from referring the complaints to the appropriate Board representative.

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Appearances:

For the Respondent
Ruhlman & Butrym, attorneys
(Edward J. Butrym, of counsel)

For the Charging Party
Turp, Coates, Essl & Driggers
(Donald S. Driggers, of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by the East Windsor Regional Board of Education (the "Board") against the East Windsor Regional Teachers Aides & Teacher Assistants Association (the "Association") alleging that the Association 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. (the "Act"), specifically,

N.J.S.A. 34:13A-5.4(b)(2). ^{1/}

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 an 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 the Commission's complaint issuance standards have not been met.

^{1/} This subsection prohibits employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances."

^{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

The Board charges that an Association memorandum, complaining of the use of some teachers aides for nursing duties, was improperly addressed to certain administrative employees of the Board. Instead, the Board contends that the memorandum should have been handled in accordance with the grievance procedure in the collective negotiations agreement (the "Agreement") between the parties, or, if not covered by the Agreement, the issue should have been raised in negotiations.

The charge brought by the Board is almost identical to a charge it filed against the Association on January 25, 1977. Conferences with a Commission staff member led to a settlement agreement between the parties on March 28, 1977 to "strictly abide by the grievance procedures set forth in the collective negotiations agreement ... " The Board contends that this settlement agreement has been violated in the circulation of the instant memorandum.

As heretofore indicated, the issue placed before the undersigned is whether, pursuant to the Act, the Association has interfered with, restrained, or coerced the employer's selection of his representative for negotiations or for grievance adjustment. Assuming for the present purpose that the document submitted to a building principal, and circulated to other Board administrators, was a grievance presented for adjustment, or alternatively presented a request for negotiations, the undersigned cannot conclude, under the circumstances

presented, that the Association interfered with, restrained, or coerced the Board in the selection of its representatives for negotiations or for the adjustment of grievances. The Board alleges that the memorandum was directed to the wrong Board agent. ^{5/} Absent in the charge is any factual allegation that the Association insisted upon an official reply to the memorandum from a nondesignated Board official, or that it refused to negotiate with the representative designated by the Board, or that the Association's actions have in any other way interfered with, restrained, or coerced the Board in the selection of its representative for the purpose of negotiations or grievance adjustment.

The circulation of the memorandum to Board administrators complaining about duties assigned to the aides is a protected activity and has not been restricted by contractual agreement. ^{6/} The conclusion by the Board that it has been

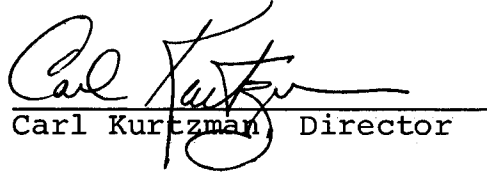
^{5/} Under the parties contract, a grievance is a claim "based upon the interpretation, application or violation of this Agreement, policies or administrative decisions affecting the teaching Aide or teaching Assistant ... " Although the contract provides that an individual grievance is first presented to a principal, group grievances may be first presented to the Superintendent and processing shall commence at the Superintendent's level. The provisions of the group grievance procedure are not supportive of the Board's argument that a group grievance must be first directed to the Superintendent's attention.

^{6/} The undersigned need not determine whether the Association may agree to restrict its activities in this regard.

bypassed inasmuch as the memorandum was presented to administrators is not supported. It is not alleged that the Association sought to prevent the administrators from fulfilling their responsibilities to direct any matter not within their authority to the appropriate channel.

Accordingly, for the above reasons the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: October 1, 1980
Trenton, New Jersey