

D.U.P. NO. 2014-12

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

In the Matter of

Woodland Park Board of Education,

Respondent,

-and-

Docket No. CO-2014-035

Woodland Park Education Association,

Charging Party.

Appearances:

For the Respondent
Lindabury, McCormick, Estabrook & Cooper, P.C.
(Jeffrey Merlino, of counsel)

For the Charging Party
Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C.
(Aileen M. O'Driscoll, of counsel)

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Woodland Park Education Association (Association) against the Woodland Park Board of Education (Board). The charge alleges the Board violated N.J.S.A. 34:13A-5.4a(5) and (1) by unilaterally scheduling a voluntary workshop in July and refusing to negotiate over compensation for workshop attendance. In response, the Board contended the parties already negotiated the subject of scheduling and compensation for workshop attendance outside the school year under Article XVII of the parties' collective negotiations agreement. According to the Board, the charge must be resolved by the parties negotiated grievance procedures because it raises a contractual dispute over the interpretation and application of Article XVII. The Director declined to exercise jurisdiction over the charge since the charge essentially alleged a breach of contract claim that must be resolved in accordance with the parties negotiated grievance procedure.

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REFUSAL TO ISSUE COMPLAINT

On August 2, 2013, the Woodland Park Education Association (Association) filed an unfair practice charge against the Woodland Park Board of Education (Board). The charge alleges that on or about July 1, 2013, the Board violated section 5.4a(5) and, derivatively, 5.4a(1)^{1/} of the New Jersey Employer-

^{1/} These provisions 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. (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 (continued...)"

Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when it scheduled a voluntary, in-service workshop to be conducted later that month. The charge also alleges the Board refused to negotiate in good faith over compensation for workshop attendees and unilaterally altered teachers' terms and conditions of employment by scheduling the workshop outside the regular work year.

The Board denies the charge. It contends that the Commission lacks jurisdiction to process this charge and should defer the charge to the parties' negotiated grievance procedure. According to the Board, the parties have negotiated over the subject of compensating teachers for attending workshops, as set forth in Article XVII(A) of the parties' collective negotiations agreement. The Board asserts that the Association's charge raises a contractual dispute over the interpretation and application of Article XVII(A). The Board contends that a voluntary work-shop does not alter teachers' terms and conditions of employment.

The Commission has authority to issue a complaint where it appears that a 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

1/ (...continued)
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; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

On February 12, 2014, I issued a letter to the parties tentatively dismissing the charge and inviting responses. No responses were filed.

I find the following facts.

The Association is the exclusive majority representative of non-supervisory, certificated employees, as well as part-time and full-time aides, secretaries, and nurses. The Board and Association are parties to a collective negotiations agreement extending from July 1, 2008 through June 30, 2012. Both parties are participating in fact-finding for a successor collective negotiations agreement.

On or about July 1, 2013, Carlos Gramata, a principal in the Woodland Park School District (District), e-mailed teachers about a voluntary, in-service opportunity for consultation with the District's literacy consultant, Kristin Gristina, on managing a literacy block for the upcoming school year. Gramata advised teachers that Gristina would be available during morning and afternoon sessions on Monday, July 15, 2013 and Wednesday, July 24, 2013. The morning session ran from 9:30 a.m. to 11:30 a.m.

and the afternoon session ran from 12:30 p.m. to 2:30 p.m. Gramatta wrote in the e-mail that the "in-service opportunity is strictly voluntary" and that those who choose to attend "only need to commit to one of the four two-hour sessions."

On July 5, 2013, Pat Posthumous, the Association's President, e-mailed a response to Gramata's July 1 e-mail. Posthumous wrote that Gramata was requesting Association members to commit to in-service training without compensation for their time. Posthumous also objected to the scheduling of in-service sessions outside the regular school year and asserted that it would be a unilateral increase in the teachers' work year. Posthumous also wrote that if the summer workshops were not cancelled, ". . . the WPEA [Association] will once again have to pursue litigation." Posthumous also emailed her response to Elaine Baldwin, the District's Interim Superintendent.

On July 10, 2013, Baldwin emailed a reply to Posthumous, advising that summer workshops were strictly voluntary and that, ". . . the administration is not requiring any of your members to attend and there will be no detriment for not attending." Baldwin also wrote that ". . . the administration is simply offering any volunteer that does wish to attend an opportunity to earn some professional development credit" and contended that the summer workshops did not represent a unilateral increase in teachers' workload.

Article XVII(A) (Professional Development and Educational Improvement) of the parties' collective negotiations agreement concerns the Board's obligation to pay the costs associated with in-service workshops and its obligation to compensate teachers who attend the workshops outside the regular work year. It provides:

The Board shall pay the full cost of tuition and other reasonable expenses incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions, or other such sessions which a teacher is required and/or requested by the Administration to take. Said teacher shall also be compensated for all time spent in actual attendance at said sessions beyond his regular working day and year at his regular rate.

Article III of the Agreement sets forth a grievance procedure comprised of four levels, ending in binding arbitration. Article III(A) provides:

In the event a dispute shall arise concerning the meaning, affect, or application of any terms and/or conditions, and said dispute cannot be resolved within 48 hours after notice in writing of the other party of the existence of said dispute, then the following procedure for the settlement of the dispute must become effective, and must be followed at all levels.

Section 5.3 of the Act requires a public employer and majority representative to use the grievance and disciplinary review procedures established by their collective negotiations

agreement for any disputes covered by the terms of that agreement. N.J.S.A. 34:13A-5.3.

In State of New Jersey (Dept. of Human Svcs.), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission expressed a preference for deferral to a negotiated grievance procedure ending in binding arbitration, ". . . when a charge essentially alleges a violation of subsection 5.4a(5) interrelated with a breach of contract claim." The Commission wrote:

The breach of a collective negotiations agreement is not enumerated as an unfair practice. We deem this omission to be significant and to evidence a legislative intent that claims merely alleging a breach of contract based on apparent good faith differences over contract interpretation would not, even if proven, rise to the level of a refusal to negotiate in good faith under subsection 5.4(a)(5). Rather than make such claims the subject of unfair practice proceedings, our Legislature has indicated that such claims must be resolved, if possible, through the parties' agreed-upon grievance procedures (citations omitted).
[Id., 10 NJPER 421]

The Commission also warned that it ". . . will not permit litigation of mere breach of contract claims in the guise of unfair practice charges." Id. 10 NJPER 422. The parties should not be entitled to substitute the Commission for a grievance procedure agreed upon as the method for resolving a contractual dispute.

In Human Services, the Commission specified circumstances in which an alleged breach of contract could ". . . rise to the

level of a refusal to negotiate in good faith." For example, claims of contract "repudiation" and charges revealing "specific indicia of bad faith" may warrant the exercise of the Commission's jurisdiction.

The Association contends that the Board repudiated the collective negotiations agreement by scheduling the workshop outside teachers' regular work year and by not compensating employees who attended the workshop. The Association alleges that the Board repudiated Article XVII(A) by not compensating workshop attendees. The Board disagrees, contending that Article XVII(A) is inapplicable in this case because it neither "required" nor "requested" teachers to attend the workshop.

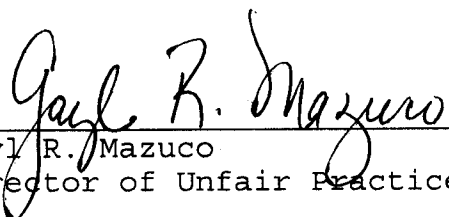
The sole issue in dispute is contractual: did the Board violate Article XVII(A) of the parties' agreement by scheduling a workshop in July and not compensating unit employee attendees? The parties have a good faith dispute over the interpretation and application of Article XVII(A). As Article III(A) of the agreement commands, any dispute between the parties over "the meaning, affect or application of any terms and/or conditions of employment" must be resolved in accordance with the parties' agreed-upon grievance procedures. Considering section 5.3 of the Act, Human Services, and Articles III(A) and XVII(A) of the agreement, I am reluctant to substitute our unfair practice

jurisdiction for the parties' grievance procedure in order to resolve a contractual dispute.

The Association has not alleged facts demonstrating a connection between the Board's obligation to negotiate in good faith under the Act and the Board's alleged breach of Article XVII(A). It has not alleged that the Board changed a clear and consistent past practice in administering Article XVII(A). The Board has not asserted that the subject matter of Article XVII(A) is non-negotiable. To the contrary, it maintains that the issue of compensation for workshop attendance has been negotiated under Article XVII(A) and reasonably relies on that Article as justification for its conduct. An arbitrator shall be able to fully resolve the dispute as set forth in the charge. For these reasons, I defer this matter to the parties' negotiated grievance procedure for resolution. I find that the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge.

ORDER

The unfair practice charge is dismissed.



Gayl R. Mazuco
Director of Unfair Practices

DATED: February 27, 2014
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 March 10, 2014.