

D.U.P. NO. 2020-14

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

In the Matter of

PATERSON CHARTER SCHOOL
FOR SCIENCE AND TECHNOLOGY,

Respondent,

-and-

Docket No. CO-2020-143

PATERSON CHARTER
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Paterson Charter Education Association (Association) against Paterson Charter School for Science & Technology (PCSST). The charge alleges that PCSST violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq., specifically sections 5.4a(1) and (5), when it unilaterally changed terms and conditions of employment for the 2019-2020 school year by failing to provide all teaching staff members at the 7-12th grade campus with a 45-minute duty-free lunch period. The Director determined that PCSST has not repudiated the parties' collective negotiations agreement (CNA), but has a different interpretation than the Association concerning how, when, or in what fashion unit members' 45-minute duty-free lunch period is to be allocated. The Director found that in the absence of facts demonstrating that PCSST repudiated the parties' CNA, the Association's claim does not sufficiently show a refusal to negotiate in good faith and instead amounts to a mere breach of contract claim. The Director also found that when a breach of contract claim is the only issue remaining, it should be resolved through the parties' grievance procedure, not the Commission's unfair practice procedure, regardless of whether the parties' grievance procedure culminates in binding arbitration.

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Appearances:

For the Respondent,
Riker, Danzig, Scherer, Hyland,
Perretti, LLP, attorneys
(Fiona E. Cousland, of counsel)

For the Charging Party,
Oxfeld Cohen, P.C., attorneys
(William P. Hannan, of counsel)

REFUSAL TO ISSUE COMPLAINT

On November 25, 2019 and March 3, 2020, Paterson Charter Education Association (Association) filed an unfair practice charge, amended charge, and second amended charge against Paterson Charter School for Science & Technology (PCSST). The charge, as amended, alleges that on or about August 26, 2019, PCSST violated section 5.4a(1) and (5)^{1/} of the New Jersey

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the
(continued...)

Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when it unilaterally changed terms and conditions of employment for the 2019-2020 school year by failing to provide all teaching staff members at the 7-12th grade campus with a 45-minute duty-free lunch period.

On January 28, 2020 a staff agent held an exploratory conference.

On February 28, 2020, the Association served a position statement on PCSST. The Association maintains that there are two 30-minute lunch periods on Mondays and that teaching staff members are only assigned to one of those periods duty-free; and that there are two 40-minute lunch periods on Tuesdays through Fridays and that teaching staff members are only assigned to one of those periods duty-free. The Association also maintains that teaching staff members are not provided with 45-minute duty-free lunch periods on early dismissal days or delayed opening days. The Association argues that PCCST's "failure to provide a 45-minute duty-free lunch period to all teaching staff members goes

1/ (...continued)
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."

beyond a mere breach of contract claim . . . [and constitutes] repudiation.”

On April 3, 2020, PCSST served a position statement on the Association. Substantively, PCSST asserts that the school schedule which the Association relies upon “is [the] schedule for students” and “students are only permitted to eat lunch at certain times, [while] teachers have no such restriction.” PCSST also asserts that “a review of teachers’ individual schedules shows . . . [that] all teachers in fact receive a 45-minute duty-free period during which they may eat lunch each day.”

Procedurally, PCSST maintains that the parties have a negotiated grievance procedure that the Association is bound to use for resolving breach of contract claims. PCSST also maintains that the Association never filed a grievance regarding the dispute underlying the amended charge; rather, the Association filed a grievance regarding three employees that has been denied. PCSST argues that the Association “may not effectively appeal the denial of a grievance by . . . renaming it an unfair practice and pursuing its grievance through PERC.”

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

I find the following facts.

The Association represents all non-supervisory certificated and non-certificated personnel employed by PCSST. PCSST and the Association are parties to a collective negotiations agreement (CNA) in effect from July 1, 2017 through June 30, 2022. The parties' negotiated grievance procedure only provides for binding arbitration of grievances pertaining to employee discipline.

Article IV of the parties' CNA, entitled "Grievance Procedure," provides in a pertinent part:

B. Definitions

1. A "grievance" is a claim by an employee, employees or the Association based upon an alleged improper interpretation, application, or violation of this Agreement, policies, or administrative decisions affecting an employee or group of employees.

2. The term "grievant" shall refer to the employee or employees or the Association making the claim on behalf of the employee or group of employees or the Association on behalf of itself.

* * *

C. Procedure

A grievance shall be deemed waived unless it is initiated in writing within 20 school days

of its occurrence or within 20 days of the date on which the grievant knew or should have known of its occurrence.

1. Level One- The grievant shall first discuss the grievance with his or her immediate supervisor, either directly or through the Association's designated representative, with the objective of resolving the matter informally.

2. Level Two- If the grievant is not satisfied with the disposition of the grievance at Level One or if no decision has been rendered within five (5) days after the discussion at Level One or ten (10) days after its presentation, whichever is sooner, the grievance may be reduced to writing and presented to the Lead Person.

3. Level Three- If the grievant is not satisfied with the disposition of the grievance at Level Two or if no decision on the grievance has been rendered within fifteen (15) days after its delivery to the Lead Person, the grievance may be submitted to the Board of Trustees.

4. Level Four- With respect to grievances pertaining to employee discipline only, if the Association is not satisfied with the disposition of the grievance at Level Three or if no decision has been rendered on the grievance within 45 calendar days of its delivery to the secretary of the Board of Trustees, the Association may submit the grievance to arbitration by filing a request with the New Jersey Public Employment Relations Commission ("PERC") for appointment of an arbitrator and in such event the

rules of such agency shall apply. Failure to timely request arbitration shall be deemed an acceptance of the Board of Trustees' decision.

Article VIII of the parties' CNA, entitled "Work Hours and Work Load," provides in a pertinent part:

A. All employees shall be provided a 45-minute duty-free lunch period.

ANALYSIS

The Association argues that PSCCT unilaterally changed a term and condition of employment by failing to provide teaching staff members with a 45-minute duty-free lunch period and claims that this constitutes repudiation of a clear contractual provision. PSCCT argues that the Association's claim requires an interpretation of a contractual provision and should therefore be decided through the parties' negotiated grievance procedure. For the reasons that follow, I find that the facts alleged in the amended charge do not satisfy the complaint issuance standard and dismiss the Association's claim.

N.J.S.A. 34:13A-5.3 requires the employer and the majority representative to negotiate in good faith over terms and conditions of employment. N.J.S.A. 34:13A-5.4a(5) prohibits an employer from refusing to negotiate in good faith. See Franklin Lakes Bor., D.U.P. No. 2006-12, 32 NJPER 193 (¶84 2006). Where the parties expressly agree in the collective agreement to provide employees a benefit during the life of the agreement,

there may be nothing more to negotiate regarding that benefit. Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 34 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000).

Where the parties each have a good faith dispute over the application of a particular contract term, the Commission usually will not exercise its unfair practice jurisdiction, but leave such disputes to be resolved through the parties' grievance procedure. State of New Jersey (Dep't of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). However, one exception to that policy is where the employer has acted in bad faith by repudiating a clear contractual obligation. Id. As the Commission explained in Human Services:

A claim of repudiation may also be supported, depending upon the circumstances of a particular case, by a contract clause that is so clear that an inference of bad faith arises from a refusal to honor it or by factual allegations indicating that the employer has changed the parties' past and consistent practice in administering a disputed clause.

[10 NJPER at 423 (citations omitted).]

Article VIII of the parties' CNA specifies that teaching staff members are entitled to a 45-minute duty-free lunch period. However, it does not address how, when, or in what fashion the 45-minute duty-free lunch period is to be allocated. PCSST does not deny that teaching staff members are entitled to a 45-minute

duty-free lunch period. Rather, PCSST maintains unit members are being provided a 45-minute duty-free lunch period based upon teaching staff members' individual schedules. Under these circumstances, I find that bad faith cannot be inferred. PCSST has not repudiated Article VIII of the parties' CNA; it has a different interpretation than the Association concerning how, when, or in what fashion unit members' 45-minute duty-free lunch period is to be allocated.

In the absence of facts demonstrating that PCSST repudiated Article VIII of the parties' CNA, I find that the Association's claim does not sufficiently show a refusal to negotiate in good faith and instead amounts to a mere breach of contract claim. When a breach of contract claim is the only issue remaining, it should be resolved through the parties' grievance procedure, not the Commission's unfair practice procedure. The Commission has found this principle applies whether or not the parties' grievance procedure culminates in binding arbitration:

[T]hese cases require us to consider whether and under what circumstances a charging party, having agreed that a contract dispute may not be submitted to binding arbitration, may still litigate a breach of contract claim in unfair practice proceedings. A mere breach of contract claim does not state a cause of action under subsection 5.4a(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.

[Human Services, 10 NJPER at 421.]

Moreover, the Commission has held that “[a]n 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.” 10 NJPER at 422; see also Tenalfy Bor., H.E. No. 88-39, 14 NJPER 193 (¶19072 1998), adopted P.E.R.C. 88-92, 14 NJPER 274 (¶19102 1988) (holding that the union was not entitled to further review of a contract dispute, by way of an unfair practice, when the parties’ negotiated grievance procedure did not end in binding arbitration).

Here, the same rationale also applies. PCSST and the Association have a negotiated grievance procedure for the resolution of contractual disputes that culminates with elevation of the grievance to PCSST’s Board of Trustees. The Association has not alleged a repudiation of the grievance procedure or that PCSST refuses to be bound by that procedure. Consistent with the principles articulated in Human Services, I decline to substitute

our unfair practice process for the parties' negotiated grievance procedure.

Accordingly, I find that the complaint issuance standard has not been met and dismiss the charge. N.J.A.C. 19:14-2.1.

ORDER

The unfair practice charge is dismissed.

/s/Jonathan Roth
Director of Unfair Practices

DATED: May 15, 2020
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 May 26, 2020.