D.U.P. NO. 2023-6

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY OF
NEW JERSEY,

Respondent,

-and- Docket No. CO-2020-021

UNION OF RUTGERS ADMINISTRATORS,
AMERICAN FEDERATION OF TEACHERS,
LOCAL #1766, AFL-CIO

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Union of Rutgers Administrators, American Federation of Teachers, Local 1766, AFL-CIO (the Charging Party or Local) alleging numerous violations of the Act as well as the WDEA. The Director concludes that the complained-of conduct did not meet the complaint-issuance standard under 5.4 a(1) or (5) of the Act. The Director also finds that no facts are alleged that support a violation of 5.4a(2) or (3) of the Act or of the WDEA.

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Appearances:

For the Respondent,
(Timothy D. Cedrone, Esq.)

For the Charging Party,
(Gregory Rusciano)

REFUSAL TO ISSUE COMPLAINT

On July 31, 2019, and August 22, 2019, the Union of Rutgers Administrators, American Federation of Teachers, Local 1766, AFL-CIO (the Charging Party or Local) filed an unfair practice charge and amended charge, respectively, against Rutgers University, the State of New Jersey (Respondent or University). The charge, as amended, alleges that the University "fail[ed] to negotiate in good faith and systematically and willfully refus[ed] to administer and abide by the agreement and restrict[ed] the union from administering" the parties' contract by engaging in ten

separate violations of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq.

The Local first claims that the University "refused to permit URA-AFT represented employees to apply for telecommunicating as prescribed by the successor agreement (all requests by employees were refused or ignored . . .)." Second, the University allegedly "failed to provide data points as prescribed by under article 47 of the successor agreement (all data sets provided since ratification were incomplete, including but not limited to the data for 'unit-division-organization code' and 'layoff date')." Third, the University allegedly "failed to properly administer negotiated salary improvements for FY 2019 & 2020 under Article 41 for employees on any form of unpaid leave and failed to provide the unit data pertaining to the negotiated raises prescribed by article 41." Fourth, the University allegedly "refused to abide by the terms of the negotiated grievance process when adjusting grievances–most recently in the instances of these grievances: (a) Dianne Filippone discharge - step three meeting on July 2, 2019 (Office of Labor Relations did not hold the meeting); (b) Barbara McAleese layoff-step three meeting scheduled for July 24, 2019 (Office of Labor Relations did not hold the meeting); and (c) grievance filed on behalf of Lisa Scott (layoff)–(Rutgers refused to schedule and hold the step two meeting)." Fifth, the University allegedly "refused to

abide by the terms of the negotiated grievance process when adjusting grievances – most recently providing a written response without scheduling and holding a grievance meeting – Harry Agnostak provided a written response on August 12, 2019 regarding the union's claimed violation of Article 14 in the B. McAleese matter." Sixth, during a step two grievance meeting on May 15, 2019, "a union witness was restricted by Kyle Fambry, step-two level manager, from presenting . . ." Seventh, "in the matter of the Lillian Cruz discharge (AR-2019-429), the step two meeting was not held (Rutgers did not respond to the request to meet) and the step three meeting was not held (Rutgers did not schedule and hold the meeting)." The eighth and ninth allegations both claim that the University did not schedule and hold a step three meeting in two other grievances. And the tenth allegation asserts that a step 3 grievance meeting held on February 11, 2019 "was not attended by the appropriate level of management (Office of Labor Relations)."

The Local claims that these actions violated subsections 5.4 a(1), (2), (3) and (5) of the Act[1/] as well as the New Jersey

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1/ This provision prohibits 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the

(continued...)

Workplace Democracy Enhancement Act (WDEA)[2/] N.J.S.A. 34:13A-5.11 through 5.15.

By email on September 28, 2020, the University submitted a position statement with supporting documentation and copied the Charging Party's representative on that communication. By email dated March 27, 2021, the Charging Party withdrew the portion of the allegations that pertained to Barbara McAleese and Lisa Scott in its fourth claim and the entirety of its fifth claim regarding Barbara McAleese.

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

1/ (...continued)
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 representative."

2/ Alleged violations of the WDEA do not necessarily implicate this agency's unfair practice jurisdiction, as the statute clearly identifies only certain conduct as an unfair practice under the Act. See N.J.S.A. 34:13A-5.14(c)

(¶120 2012).

I find the following facts.

The University, is a public employer within the meaning of the Act. The University and the Local are parties to a collective negotiations agreement (CNA) extending from July 1, 2018 through June 30, 2022. The Local ratified the CNA on June 13, 2019. The Local represents a negotiations unit comprised of administrative employees employed by the University at its many campuses. About 2,500 employees are in the unit.

Article 14 of the parties' CNA sets forth their negotiated grievance procedure. It has four enumerated steps, culminating in binding arbitration at the fourth step. Step 1 provides for informal resolution by permitting the "aggrieved party" to address the matter with the party's supervisor. Step 2 directs that a written grievance should be submitted to the level of supervision above the one that took the action that forms the basis of the grievance. It further specifies that "[w]ithin twenty-one (21) calendar days of receipt of the written grievance, this next level of supervision, or his/her designee will arrange for and hold a meeting with the grievant." Within 14 calendar days of the step 2 meeting, this next-level supervisor or his/her designee must provide a written answer. Step 3 provides that the Local may request another meeting if it is not satisfied with the Step 2 answer. Once requested, "the

Office of Labor Relations will arrange for and hold the meeting" within 21 calendar days of the Local's request. The grievant has the option of having a Local representative attend the Step 3 meeting, and the Office of Labor Relations must send a written answer within 14 calendar days after the step 3 meeting.

The procedure also permits the Local/grievant to advance to the next step of the grievance procedure if the University fails to respond. Specifically, it provides:

> Any written decision or written answer to a grievance made at any step which is not appealed to the succeeding step within the time limits provided, or such additional period of time as may be mutually agreed upon in writing, shall be considered final. If Rutgers should exceed the time limits in replying to any grievance at any step in the grievance procedure, the grievance may be advanced to the next step within the time limitations for advancing a grievance as set forth above.

Refusing/Ignoring Telecommuting Requests

Article 59 of the parties' CNA is entitled "Telecommuting." The Article provides that unit employees "are eligible to be considered for telecommuting." It contains twenty paragraphs outlining various conditions that must be met before an employee can have the ability to telecommute, including a "Safety Self-Audit" form, the "Acceptable Use Policy for Information Technology Resources" form, supervisory review of the Request to Telecommute Form, and the signing of a telecommuting agreement. The Article also provides that telecommuting privileges can be

revoked at any time, and that determinations regarding whether employees can telecommute are "final and not subject to the grievance procedure."

By email dated July 19, 2019, the Director of the Local, Greg Rusciano, advised University representatives that the Local ". . . received notice from URA-AFT represented employees in SEBS and SAS[3/] about being denied the ability to apply for the newly negotiated telecommuting arrangement. Managers in those respective Dean's offices have unreasonably informed the employees that no guidance, forms or authority has been conveyed to the Dean's level. Same is not a [sic] valid." Therefore, Rusciano advised that the Local was moving this grievance to step 3.

Failure to Provide Complete Data Points as Required by CNA

Section B of Article 47 of the parties' CNA obligates the University to provide the Local access to twenty-four (24) different data points, including names, addresses, gender, leave status, "unit-division-organization code" via the "Union Library" if that data "is on file with the University." As the University's position statement explains, the Union Library is an

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3/ The University attached this email as an exhibit to its position statement. It also explains that "SAS" refers to the University's Schools of Arts and Sciences while "SEBS" refers to School of Environmental and Biological Sciences."

electronic database containing information about unit employees, which can be accessed at any time by the Local.

On July 19, 2019, the Local advanced a grievance regarding the alleged failure to provide the unit-division-organization code (UDO) and layoff date. According to the University's position statement, the Local never advanced it to Step 4 of the grievance procedure for binding arbitration. By email dated November 25, 2019, the University advised the Local that the UDO code had been added to the Union Library.[4/] In its position statement, the University produced a December 12, 2019, email from Local Representative Greg Rusciano, in which he advised the University that the Local was "fine with the new data set as compiled at this time." And again during a January 7, 2020, conference call with the parties' representatives, both agreed that all of the data sets were complete.

Failure to Properly Administer Salary Increases for Fiscal Years 2019 and 2020 and Failure to Provide Information Pertaining to the Negotiated Raises Pursuant to the CNA

Article 41 Section C of the parties' CNA addresses salary increases. For both fiscal years 2019 and 2020, the negotiated language defining eligibility for those increases is virtually identical. For fiscal year 2018-2019, it provides: "To be

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4/ It is unclear whether the lay-off date information was also updated. Nonetheless, during a January 7, 2020 conference call with the parties' representatives, both agreed that all of the data sets were complete.

eligible for this payment, members of the unit must be on the University's payroll in a URA negotiations unit position on the date of ratification and continue to be on the payroll in a URA negotiations unit position on the payment date of the increase." For fiscal year 2019-2020, "members of the unit must be on the University's payroll in a URA negotiations unit position on July 30, 2019 and continue to be on the payroll in a URA negotiated unit position on the payment date of the increase."

Section F of Article 41 is entitled, "Information Exchange" and obligates the University to provide a written "final report of the amount that each employee receives through the SCP [Staff Compensation Plan]" within thirty days from notification of the raise.

The University's position statement explains that Local Representative Rusciano asked the Director of Labor Relations, Jeff Maschi, about eligibility for the payments for unit employees on unpaid leave. In an email response to Rusciano dated June 10, 2019, Maschi quoted relevant contract language that the parties negotiated. He wrote that consistent with the agreed-upon language, any unit employees who are on unpaid leave on the date of ratification and who continue to remain in unpaid status on the payment date of the increase will not receive a payment increase until they return from unpaid status and receive paychecks again from the University. The University's position

statement asserts that the Local did not respond to this email. Notwithstanding its apparent concern, the Local ratified the contract three days later.

By email dated November 25, 2019, the University's counsel sent to Local Representative Rusciano the report regarding the amount of compensation each employee received pursuant to its obligations under Article 41 Section F. Representative Rusciano replied by email on December 12, 2019. He identified various errors. He also objected that the information provided showed only the calculated bi-weekly payments. He wrote that the Local "interpret[s] the language to require the actual amounts paid to a person, not just the calculated raises for each bi-weekly pay period."

Refusal to Abide by the Grievance Process By Failing to Hold a Step 3 Meeting

As discussed above, Step 3 of the parties' grievance procedure provides that the Office of Labor Relations will conduct a Step 3 meeting. Under Section 6 of Article 14, the Union can advance a grievance to the next step of the procedure if the University fails to timely respond at any step in the process.

The Local alleges that the University failed to hold a Step 3 meeting regarding the grievance contesting the discharge of Diane Filippone. Nonetheless, on July 17, 2019, the Local filed with the Commission a Request for Submission of a Panel of

Arbitrators (AR-2020-029). In the statement identifying the grievance to be arbitrated, the Local contested whether the University violated the CNA when it discharged Diane Filippone.

Manager Restricted a Witness from Presenting at Second Step Grievance Meeting

On or around May 15, 2019, the parties conducted a step 2 grievance meeting concerning the grievance contesting Diane Filippone's discharge. The Local alleges that at this meeting a Step 2 level manager, Kyle Fambry, restricted a union witness from "presenting." As explained above, this grievance was processed to the fourth step of the grievance procedure, which is arbitration.

The Local indicated during conferences that this conduct violated a settlement agreement of the parties on December 17, 2013, following the filing of an unfair practice charge. The charge does not detail how the alleged conduct violates the 2013 agreement. The parties, however, provided a copy of the document. The sections that appear most relevant to the instant allegations provide that "everyone attending the meeting who wishes to speak will have an opportunity to speak" and that "the union and the employer shall have the opportunity to fully present any and all information they deem relevant to the issues involved in the grievance."

Failure to Hold Second and Third Step Grievance Meetings for Lillian Cruz Discharge

According to the University's position statement, on December 4, 2018, the University discharged Lillian Cruz for interfering with an investigation involving her brother. The University did not conduct a second or third step grievance meeting. On February 14, 2019, the Local submitted a Request for a Panel of Arbitrators to the Commission to contest Lillian Cruz's discharge before an arbitrator. The arbitration hearings occurred on September 13, October 11, November 27, December 2, 2019 and January 22, 2020.

Failure to Hold Step Three Meetings for the "Multiple jobs/class action grievance" and the "multiple jobs/class action OT grievance"

On February 15 and June 19, 2019, the Local filed Requests for a Panel of Arbitrators to the Commission in AR-2019-431 and in AR-2019-645, respectively. It is unclear from the charge when the Local initially filed the grievances and at what step, as the Local did not identify this information in its charge for these claims. Nonetheless, it is clear from the Commission filings that both grievances proceeded to arbitration, and that they both involve payment disputes. According to the University's position statement, the two grievances were consolidated for purposes of arbitration.

Failure to Have the Appropriate Level of Management (Office of Labor Relations) Attend a Step 3 Grievance Meeting

According to the Local's amended charge, on February 11, 2019, the parties conducted a Step 3 meeting for a grievance involving Maria Gargano. The amended charge does not identify the management representatives who attended this meeting or their titles, but indicates only that the management representatives who did attend were not appropriate in the Local's view. It does not appear that the Local is contesting the ultimate authority of the management representatives who attended the meeting to bind the University, because the Local ultimately settled this grievance. The University, in its position statement, attached as an exhibit the settlement agreement that the parties' reached related to Gargano's grievance. The settlement agreement provides that it was reached on "Tuesday, February 5, 2019," which would pre-date the Step 3 meeting in this matter as identified in the charge. Signing for the University on February 13 and 14, 2019, was Assistant Dean Danyelle Thurman and Senior HR Consultant from Camden Human Resources.

ANALYSIS

Refusal/Ignoring Telecommuting Requests

The University contends in its position statement that this claim must be dismissed in its entirety. It argues that the allegations fail to meet the pleading requirements; that the

claim is moot since the University relaxed its telecommuting guidelines and procedures since March, 2020 in response to the COVID-19 public health emergency, and that the allegations articulate nothing more than a contract violation.

I agree that this claim fails to satisfy the pleading requirements, and therefore, must be dismissed. Under N.J.A.C. 19:14-1.3a(3), a charge "shall contain . . . [a] clear and concise statement of facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts . . . ." Thus, this claim fails to provide the requisite information. The charge, as amended, does not identify the names of Respondent's agents that allegedly denied unit employees' telecommuting requests, nor the dates when such denials occurred.

This claim must also be dismissed because it merely alleges a contractual breach that does not rise to the level of an unfair practice under State of New Jersey, (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The Local negotiated and agreed to have unit employees complete several forms and other steps before telecommuting could be authorized under Article 59 for those unit members that the University, in its discretion, deems are suitable candidates for telecommuting. Article 59 of the CNA does not create a clear contractual right

to telecommuting, but merely provides that unit employees are eligible for consideration once various related telecommunication forms are completed by employees and supervisors. Whether the alleged telework requests were properly refused is a breach of contract claim over which the Commission does not exercise jurisdiction. To the extent that employees' requests were refused or ignored due to the unavailability of contractually-required forms deprived employees of a contractual right to be considered, is also a breach of contract claim. As the allegations here do not predominantly relate[5/] to an employer's duty to negotiate in good faith, the Commission does not exercise unfair practice jurisdiction over disputes that are governed by a collectively negotiated procedure. Human Services, 10 NJPER at 422-23.

Failure to Provide Complete Data Points as Required by CNA

The Local's allegation must be dismissed because it again merely alleges a breach (regarding an alleged failure to provide

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5/ The Commission in Human Services listed several breach of contract allegations that "predominantly relate" to an employer's duty to negotiate in good faith, such as an employer's unilateral change to the parties' past and consistent practice in administering a disputed clause; an employer's decision to abrogate a contractual provision based on its belief the provision is non-negotiable; the repudiation of a contract clause so clear that an inference of bad faith arises from the employer's refusal to honor the provision; and charges which allege the policies of our Act, rather than a mere breach of contract claim, are at stake. Id., 10 NJPER at 422-23.

some data) specified in the contract that does not constitute an unfair practice under Human Services, supra.

Additionally, the dispute is moot. The Commission has held that ". . . [a] case will be found moot where 'continued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future.'" Hudson Cty., D.U.P. No. 2011-8, 37 NJPER 160 (¶50 2011) (citing Ramapo Indian Hills Bd. of Ed., P.E.R.C. No. 91-38, 16 NJPER 581, 582 (¶21255 1990)). Here, the University provided complete data on numerous categories of information shortly after the CNA's ratification for a very large negotiations unit, except for a couple of data points. It subsequently remedied that error to the satisfaction of the Local. Accordingly, continued litigation is not warranted under these circumstances.

Failure to Properly Administer Salary Increases for Fiscal Years 2019 and 2020 and Failure to Provide Information Pertaining to the Negotiated Raises Pursuant to the CNA

The Local's third claim sets forth two separate allegations, and both must be dismissed for substantially the same reasons. With respect to the salary dispute, the University acted pursuant to the two eligibility requirements that are expressly set forth in the contract. Neither in the charge, nor in response to the Director of Labor Relations' email days before the ratification, did the Local explain why the University's reading of the two

eligibility requirements was not "proper." At most, this allegation again constitutes a mere breach of contract claim, which must be dismissed under Human Services, supra. As the University noted in its position statement, claims regarding payment disputes have been dismissed for lack of jurisdiction. See e.g., County of Somerset (Sheriff), D.U.P. No. 2002-002, 25 NJPER 359 (¶30153 1999) (dismissing unfair practice charge for lack of jurisdiction where the charge alleged the employer failed to pay an employee for shift overlap, holiday leave and personal time).

Similarly, the Local's claim that the University's written report of payments was improper or inadequate in some way is yet another breach of contract claim that must be dismissed under Human Services, supra. The Local tacitly acknowledged as much in its December 12, 2019 communication to the University, when its representative explained why he viewed his "interpretation" of the relevant contract provisions to be proper.

Failing to Hold a Step Meeting 3 Meeting for Diane Fillipone, Failing to Hold Second and Third Step Grievance Meetings for Lillian Cruz' Discharge, Failure to Hold Step Three Meetings for the "Multiple jobs/class action grievance" and the "multiple jobs/class action OT grievance"

The remainder of the Local's fourth claim involving Diane Fillipone, its seventh claim involving Lillian Cruz, and its eighth and ninth claims involving the multiple jobs class action grievances, all pertain to the University's failure to hold

certain step meetings. None of these claims, individually or together, meet the complaint - issuance standard.

It is well-settled that a public employer's failure to respond to a grievance at intermediate steps is typically not an unfair practice when the underlying collective negotiations agreement includes a self-executing grievance procedure ending in binding arbitration. New Jersey State Judiciary (Cumberland Cty. Vicinage), D.U.P. No. 2006-3, 31 NJPER 345 (¶136 2005); City of Newark, D.U.P. No. 95-22, 21 NJPER 53 (¶26037 1995); Brick Tp. Bd. of Ed., D.U.P. No. 92-12, 18 NJPER 210 (¶23093 1992); see also City of Pleasantville, D.U.P. No. 77-2, 2 NJPER 372, 373 (1976) (holding that in such instances, "the employee organization is not precluded from pursuing the arbitration to conclusion ex parte and the grievance will be 'processed' to arbitration pursuant to the parties' contract notwithstanding the public employer's failure to take part in that process").

Here, the parties' CNA expressly permits the Local to advance its grievance to the next step, and it provides for binding arbitration. Therefore, the grievance procedure is self-executing.

The Local filed grievances regarding Filippone's discharge, Cruz's discharge, and its two "multiple jobs" payment disputes. The Local pursued each of these matters to arbitration, even though the University allegedly did not conduct a step 2 and/or

step 3 meeting. Accordingly, I decline to issue complaint on these claims.

Also, the seventh, eight and ninth claims all fail to satisfy the pleading requirements under N.J.A.C. 19:14-1.3a(3). They fail to identify the dates of the alleged unlawful acts and the names of the persons who committed them.

Manager Restricted a Witness from Presenting at Second Step Grievance Meeting

This claim must also be dismissed. First, the dispute is moot. We have refused to issue a complaint where there were no remaining issues of practical significance from the alleged unlawful conduct and where recurrence of such conduct was unlikely. See Trenton Bd. of Ed., D.U.P. No. 2020-9, 46 NJPER 345 (¶84 2020) (citing Communications Workers of America, Local 1031, D.U.P. No. 2016-5, 43 NJPER 15 (¶5 2016), aff'd P.E.R.C. No. 2017-4, 43 NJPER 71 (¶18 2016); Mt. Olive Tp., D.U.P. No. 85-11, 10 NJPER 603 (¶15281 1984); Union Cty. Reg. H.S. Bd. of Ed., D.U.P. No. 79-23, 5 NJPER 158 (¶10088 1979)). Here, there are no remaining issues of practical significance from the alleged restriction because the parties continued to process the grievance to arbitration. The charge does not allege that the restriction of the individual's presentation had any consequence or impact, and it does not explain the significance of that presentation. The charge also does not allege any chilling effects from that single instance, nor is any such effect

apparent from the facts in the charge. Although there is a chance that the conduct could recur, given the prior settlement agreement between the parties regarding a seemingly similar dispute, the likelihood is low since the charge only identifies one specific instance of some sort of restriction on a witness's presentation in the many years since the settlement agreement's execution and the Step 2 meeting for Filipone's discharge. Under these circumstances, continued litigation does not effectuate the purposes of the Act.

Second, to the extent the Local is alleging that the 2013 settlement was violated, this claim must be dismissed. The Commission has recognized that a breach of a settlement agreement does not violate the Act, and that the enforcement of its terms must be sought in Superior Court. City of Asbury Park, P.E.R.C. No. 2002-73, 28 NJPER 253 (¶33096 2002) (explaining that a settlement agreement resolving an alleged unfair practice claim is essentially a contract between the parties). Thus, whether the manager's conduct complied with the terms of the settlement agreement is a dispute that is outside of our unfair practice jurisdiction.

Failure to Have the Appropriate Level of Management (Office of Labor Relations) Attend a Step 3 grievance Meeting

The Local's final claim appears to allege that the University violated the Act by not having a representative from the Office of Labor Relations attend the Step 3 meeting for Maria

Gargano's grievance. The Local is not alleging that the management representatives who attended the meeting lacked the requisite authority to bind the University, as the Local ultimately entered into a settlement agreement in this matter. The complaint apparently arises from the fact that the parties' grievance procedures provides that the Office of Labor Relations is obligated to "arrange for and hold" the step 3 meeting.

To the extent the Local is making another contractual argument, this claim must be dismissed pursuant to Human Services, supra. See also Northwest Bergen Cty. Utilities Authority, D.U.P. No. 2015-5, 41 NJPER 199 (¶67 2015) (no unfair practice where the gravamen of the dispute was over competing contractual interpretations of the grievance procedure and there was no allegation that the employer prevented the majority representative from pursuing arbitration). The parties' grievance procedure does not specifically provide that only a representative from the Office of Labor Relations may conduct the meeting. At most, this allegation raises a mere breach of contract claim that must be dismissed.

Moreover, the Local is not entitled to dictate who the University chooses as its representative, and vice versa. We have dismissed unfair practice claims that essentially contest a public employer's decision to delegate some or all of its decision-making authority under the grievance procedure to its

particular agents. See County of Hudson, D.U.P. No. 2021-4, 47 NJPER 295 (¶69 2021) (dismissing unfair practice charge where the County's step three designee was limited to conducting a fact-finding hearing); Wayne Bd. of Ed., D.U.P. No. 92-9, 18 NJPER 105 (¶23050 1992) (refusing to issue complaint where charge alleged board violated grievance procedure by designating its attorney to serve as step 3 hearing officer). Here, the Local's claim would essentially interfere with the University's ability to delegate its authority to one of its agents.[6/] Accordingly, this claim is dismissed.

No facts are alleged that support a violation of subsections 5.4a(2) or (3) of the Act. Accordingly, they are dismissed.

Additionally, no facts are alleged that support an unfair practice claim arising under the WDEA. The WDEA does not expressly confer upon the Commission a general jurisdiction to enforce all of the statutorily-created obligations imposed upon public employers. See Classical Academy Charter School, D.U.P. 2022-1, 48 NJPER 113 (¶29 2021). Furthermore, the instant charge makes only a generalized claim of a WDEA violation, and fails to articulate any specific facts that implicate conduct expressly

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6/ There are also no facts that indicate that the University's decision regarding who can serve as its authorized designee at a given step of the grievance procedure has an identifiable impact on employees' terms and condition of employment that would arguably give rise to a negotiations obligation.

identified by the WDEA as an unfair practice under subsection a(1) of the Act. N.J.S.A. 34:13A-5.14. Such statements clearly are insufficient to meet the pleading requirements, and the Local's claim can also be dismissed on that basis. N.J.A.C. 19:14-1.3a(3).

ORDER

The complaint issuance standard has not been met and I decline to issue a complaint on all of the allegations in this unfair practice charge, as amended. N.J.A.C. 19:14-2.1. It is dismissed.

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: September 13, 2022
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 September 23, 2022.