D.U.P. NO. 97-4

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

In the Matter of

PENNS GROVE-CARNEYS POINT BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CI-96-71

WILLIAM A. HARBESON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by William Harbeson against his employer, the Penns Grove-Carney's Point Board of Education, alleging that the Board terminated him without just cause, gave him improper Rice notification and violated his Weingarten rights. The Director found that the Commission does not have jurisdiction over the improper Rice allegation, or the improper termination. Harbeson does not allege that he was dismissed because of having engaged in activity protected by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Finally, the Director found that the charging party's own version of the facts concerning the Weingarten issue contradicted his assertion that he was denied the opportunity to obtain a union representative at an investigatory interview.

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Appearances:

For the Respondent,
John E. Bergh, attorney

For the Charging Party,
William A. Harbeson, pro se

REFUSAL TO ISSUE COMPLAINT

On May 16, 1996, William A. Harbeson filed an unfair practice charge against his employer, the Penns Grove-Carney's Point Board of Education, with the New Jersey Public Employment Relations Commission, alleging that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 (a)(1),(3) and (5).[1/] Harbeson alleges that the City terminated him without just

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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; (3) Discriminating in regard to hire or tenure of employment or any term or

Footnote Continued on Next Page

cause, disregarded his Weingarten rights, gave him improper Rice notification and failed to respond to a grievance filed over his termination by his majority representative.

Although Harbeson claims that he was terminated without just cause and alleges a violation of subsection 5.4(a)(3) of the Act, he cites no facts alleging that he was engaged in activity related to the collective negotiations process, the filing or processing of grievances or any activity on behalf of his majority representative. An employer violates subsection (a)(3) only when it discriminates in regard to tenure of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act. For there to be a violation of this subsection, there must be a nexus between the Respondent's discriminatory conduct and the Charging Party's protected activity. Here, there is no allegation that Harbeson engaged in protected activity. Thus, even if he proved that he was terminated without just cause, that would not be a violation of the Act. Accordingly, the (a)(3) allegation does not meet the Commission's compliant issuance standard and must be dismissed. N.J.A.C. 19:14-2.1.

1/ Footnote Continued From Previous Page

condition of employment to encourage or discourage 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.

Harbeson also claims that the Board disregarded his Weingarten rights and gave him an improper Rice notification. The uncontroverted facts are that Harbeson was given the opportunity to obtain a union shop steward after being called to a meeting with the superintendent and chief labor relations official. When a shop steward could not be located, the Board suspended Harbeson on the spot, without any interview having occurred.

In East Brunswick Bd. of Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in pert. part, App. Div. Dkt. No. A-280-79 (6/18/80), the Commission adopted the holding in NLRB v. Weingarten Inc., 88 LRRM 2689, 420 U.S. 251 (1975). Under Weingarten, an employee is entitled to have a union representative present at an investigatory interview which the employee reasonably believes might result in discipline. Here, Harbeson was summarily suspended or terminated. He was not denied union representation at the meeting at which he was suspended. No interview occurred. John E. Runnells Hosp., P.E.R.C. No. 85-91, 11 NJPER 147 (¶16064 1985), held that an employee does not have a right to a representative at a meeting held solely for the purpose of informing the employee that he was being terminated. Thus, Harbeson did not have the right to a union representative where he was merely informed that he was suspended. These facts do not support a violation of Harbeson's Weingarten rights and this part of the charge must also be dismissed.

Harbeson claims he was not given proper Rice notification. Such claims are outside of the Commission's jurisdiction.2/

Finally, Harbeson alleges that the Board failed to respond to his grievance. Article 3, section C. 7. of the collective negotiations agreement between the Board and Harbeson's majority representative, the Penns Grove-Carney's Point School Employees Association, provides a self-executing grievance procedure ending in binding arbitration. The refusal to process a grievance at the intermediate step of a grievance procedure is normally not an unfair practice where the grievance procedure is self-executing, that is, where the grievance will advance to the next step of the procedure automatically if the employer does not respond at any step before arbitration. State of New Jersey, D.U.P. No. 88-9, 14 NJPER 146 (¶19058 1988); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986). The grievance procedure in the applicable agreement is self-executing; Harbeson's grievance could have proceeded automatically if the employer did not respond at intermediate steps. Thus, this allegation does not meet the Commission's complaint issuance standard.

2/ In Rice v. Union Cty Reg. H.S. Bd. of Ed., 155 N.J. Super. 64 (App. Div. 1977) terminated employees were entitled to reasonable notice of the Board's intention to consider personnel matters related to them; under statute, such employees can waive right to have school board discuss their employment in private executive session.

Based on all the above, I decline to issue a complaint and dismiss the charge in its entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: July 18, 1996
Trenton, New Jersey