

D.U.P. NO. 92-12

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

In the Matter of

BRICK TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-91-67

EDWARD F. O'TOOLE, JR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that an employer failed to provide a response to a step one grievance. The Director finds that an initial grievance was processed to arbitration despite the employer's lack of written response. The Director also finds that the Board's failure to respond to a second grievance regarding its failure to provide a written response to the initial grievance is moot.

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Appearances:

For the Respondent,
Barbara Wylie, Assistant Transportation Supervisor

For the Charging Party,
Edward F. O'Toole, Jr., pro se

REFUSAL TO ISSUE COMPLAINT

On May 1, 1991, Edward F. O'Toole Jr. (O'Toole) filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Brick Township Board of Education ("Board") violated subsection 5.4 (a)(1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). O'Toole alleges that the Board violated the Act by failing to comply with the grievance procedure contained in the collective negotiations agreement between the Board and his majority

^{1/} This subsection prohibits public employers, their representatives or their agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

representative, Transport Workers Union of America, Local 224 ("Local 224").

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 any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{2/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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 I may decline to issue a complaint.^{4/}

O'Toole alleges that the Board violated the Act by failing to provide him with a written response to a grievance within the ten day period set forth in the collective negotiations agreement between the Board and Local 224. The grievance procedure in the

^{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 charged 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.

collective negotiations agreement between the Board and Local 224 provides in pertinent part that "Within ten (10) school days thereafter [the submission of a grievance], a written reply shall be given by the supervisor to the grievant and UNION committee representative." O'Toole alleges that the Board repudiated the collective negotiations agreement by failing to provide a response to his grievance within the ten days required by the collective negotiations agreement. He seeks "...to compel compliance with (the) contract...".

The Board filed responses stating that O'Toole's grievance was denied at the first step and was automatically moved to the second step by Local 224's grievance chairperson. The Board also states that O'Toole's grievance was resolved in arbitration and that O'Toole received a monetary settlement. The Board submitted a copy of the settlement agreement and a settlement check endorsed by O'Toole.

O'Toole, in turn, responded that his charge does not address the grievance that resulted in a monetary settlement. Rather, the charge addresses the Board's failure to respond to a second grievance. The subject of the second grievance was the Board's failure to provide a written response at the first step of the initial grievance.^{5/} O'Toole neither admits nor denies that the matter was resolved through the arbitration process or that he received a monetary settlement.

^{5/} The Board also submitted proof of service of its January 2, 1992 statement to O'Toole.

An employer's failure to follow intermediate steps of a grievance procedure on individual grievances is not a contract repudiation. New Jersey Transit Bus Operations, P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986). Even if the Board did not provide O'Toole with a written response to his grievance at the first step, the grievance continued to be processed and moved through the grievance procedure to arbitration. The Board's action did not constitute a refusal to process the grievance and O'Toole was not denied access to the grievance process. cf. 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); Tp. of Millburn, D.U.P. No. 81-25, 7 NJPER 370 (¶12168 1981). The Board's failure to respond to the second grievance is moot. The initial grievance was processed to arbitration despite the Board's failure to provide a written response. There is nothing to be gained in litigating this "failure to provide a written response."^{6/}

^{6/} In the body of his unfair practice charge, O'Toole also alleges a violation of N.J.S.A 34:13A-5.7. That section provides:

Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this act.

However, O'Toole has not alleged any facts to show that he received disparate treatment because he was not a member of Local 224.

Based upon the foregoing, I do not believe that the Commission's complaint issuance standard has been met and I will not issue a complaint on the allegations of this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber
Director of Unfair Practices

DATED: March 20, 1992
Trenton, New Jersey