

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

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-81-15

SAYREVILLE EDUCATION SECRETARIAL
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by a majority representative relating to the abolition and creation of clerical positions by a Board of Education. The Board's actions corresponded to existing vacancies in the abolished positions. The Director, applying court precedent, determines that the Board was acting in its managerial prerogative.

D.U.P. NO. 81-9

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Appearances:

For the Respondent

Casper P. Boehm, Jr., attorney

For the Charging Party

Rothbard, Harris & Oxfeld, attorneys
(Nancy Iris Oxfeld of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on July 16, 1980, and amended on September 10, 1980, by the Sayreville Education Secretarial Association (the "Association") against the Sayreville Board of Education (the "Board") alleging that the Board was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1 et seq. (the "Act"), specifically, N.J.S.A. 34:13A-5.4 (a) (1) and (5). 1/

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 charge. 2/ The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This 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 the undersigned may decline to issue a complaint. 4/

1/ These subsections prohibit 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 representative."

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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent ... "

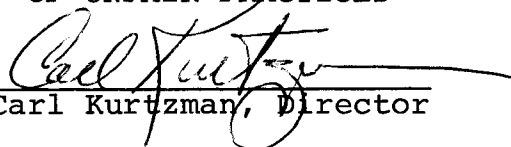
3/ N.J.A.C. 19:14-2.1

4/ N.J.A.C. 19:14-2.3

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

The Charge in the instant proceeding alleges that the Board violated N.J.S.A. 34:13A-5.4 (a)(1) and (5) when it abolished a twelve month Class B secretary position and created instead a ten month Class A position and when it abolished a twelve month Class A secretary position and created instead a ten month Class A position without prior negotiations with the Association. The Charge indicates that the twelve month positions were abolished and the ten month positions created to correspond with existing vacancies due to a resignation and retirement. In In re Ramapo-Indian Hills Ed. Assn. v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., P.E.R.C. No. 80-9, 5 NJPER 302 (¶ 10163 1979), affmd. App. Div. Docket No. A-4613-78 (10/10/80), the Commission held that a Board of Education has no obligation to negotiate over a Board's decision to abolish a position and to create a new position. Accordingly, Ramapo-Indian Hills dictates that the undersigned decline to issue a complaint since the allegations of the Association, even if true, cannot constitute an unfair practice within the meaning of the Act. ^{5/}

BY ORDER OF THE DDIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: November 13, 1980
Trenton, New Jersey

^{5/} See, in contrast, In re Piscataway Tp. Bd. of Ed., 164 N.J. Super. 98 (App. Div. 1978, aff'g P.E.R.C. No. 77-65,3 NJPER 72 (1977) and P.E.R.C. No. 77-37, 3 NJPER 72 (Cont'd)

5/ Continued

(1977), in which a refusal to negotiate in good faith was found when the employer reduced the yearly term of employment of incumbent employees from twelve to ten months. There, no positions were abolished or created; the same employees retained the same positions at all times. See also Galloway Tp. Assn. of Educational Secretaries, 78 N.J. 1 (1978).