

D.U.P. NO. 90-17

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

In the Matter of

BRIDGEWATER-RARITAN REGIONAL
SCHOOL DISTRICT,

Respondent,

-and-

Docket Nos. CO-88-314
CO-88-330

BRIDGEWATER-RARITAN EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a majority representative's charge alleging that the employer unlawfully refused to process a grievance. The Director determined that the grievance procedure was self-executing and that the majority representative retained the right to advance the grievance. Accordingly, the Director dismissed the charge that the employer violated subsections 5.4(a)(5) and (1) of the New Jersey Employer-Employee Relations Act.

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Appearances:

For the Respondent
Soriano & Gross, attorneys
(Daniel C. Soriano, of counsel)

For the Charging Party
New Jersey Education Association
(John Thornton, Jr., Field Rep.)

REFUSAL TO ISSUE COMPLAINT

On June 2 and 15, 1988, the Bridgewater-Raritan Education Association ("Association") filed an unfair practice charge against the Bridgewater-Raritan Regional School District ("District") alleging that in April 1988, the District refused to process a grievance, pursuant to the terms of the parties' collective negotiations agreement. The grievance concerned the District's written negative evaluation of a teacher's performance as an official in a sports program. The District's refusal to "treat the grievance as a grievance" allegedly violates subsections 5.4(a)(5)

and (1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

The District submitted a letter asserting that the grievance does not concern an aspect of employment "covered by the collective negotiations agreement." An exploratory conference failed to informally resolve the matter.

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

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

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/}

The Commission's complaint issuance standard has not been met. The parties' 1985-88 agreement defines a "grievance" as a claim that there has been a "misinterpretation, misapplication, or a violation of Board policy." The five-step grievance procedure ends in binding arbitration. (Article III). It also states:

Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved employee to proceed to the next step. Failure to at any step of this procedure to appeal a grievance to the next step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step. [Article III, B. 2].

The Commission has held that where the parties' grievance procedure is self-executing, an employer's failure to respond at intermediate steps prior to arbitration is not an unlawful refusal to negotiate. 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) and Tp. of Millburn, D.U.P. No. 81-24, 7 NJPER 370 (¶12168 1981).

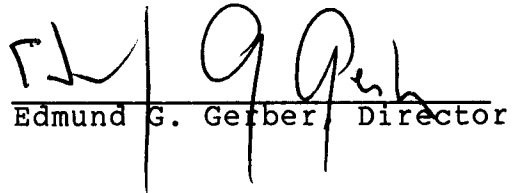
Even if the District's response to the grievance was a "decision" under the terms of the agreement, the Association

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

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

retained the right to appeal the District's response to the next step. If the District did not properly "decide" the grievance, the Association retained the same right. Accordingly, the District did not violate the Act and I dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Geber, Director

DATED: June 28, 1990
Trenton, New Jersey