

D.U.P. NO. 92-9

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

In the Matter of

WAYNE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-92-143

WAYNE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint in a charge alleging the employer improperly handled a grievance hearing at an intermediate step of the grievance process. The Director dismissed the charge, finding that the contract contained a self-executing grievance procedure which permitted the Association to then pursue its grievance to arbitration.

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Appearances:

For the Respondent,
Fogarty & Hara, attorneys
(Stephen R. Fogarty, of counsel)

For the Charging Party,
Charles Tucker, President

REFUSAL TO ISSUE COMPLAINT

On November 6, 1991, the Wayne Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Wayne Board of Education ("Board"). The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1).^{1/}

^{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."

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/}

The Association alleges that the Board interfered with employees' rights by depriving Association member Joseph Modica a fair grievance hearing at the Board level of the grievance process. It asserts that the Board permitted its attorney to act as the hearing officer to hear the grievance at the Board' level. It further contends that the Board Attorney did not act impartially,

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.

refused to call certain witnesses, disallowed adequate time for the Association to present its case, and unilaterally combined two grievances.

Article III of the parties' 1990-93 contract provides for a three-step grievance process. At the third step, the employee or the Association may present the grievance to the Board. The contract provides that the Board "shall hold a hearing on the grievance...in executive session." Contract Article 4 permits an aggrieved employee dissatisfied with the Board's determination to submit the unresolved grievance to binding arbitration. The decision of the arbitrator is binding for all matters except class size, promotions, transfers, and non-renewal of non-tenured contracts.

On October 28, 1991, the Association filed a request for arbitration with this Commission (AR-92-239) concerning Mr. Modica's grievance. On December 16, the Commission assigned an arbitrator to hear the dispute.

The Commission has repeatedly held that assertions of an employer's refusal to respond to a grievance, or its improper treatment of a grievance at an intermediate step of the grievance procedure, in and of itself, is not an unfair practice, when the contract provides for a self-executing grievance procedure which culminates in binding arbitration. See New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987);

City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); Tp. of Rockaway, D.U.P. No. 83-5, 8 NJPER 644 (¶13309 1982); Rutgers University, D.U.P. No. 82-28, 8 NJPER 237 (¶13101 1982); Essex County Vocational School Bd. of Ed., D.U.P. No. 77-2, 2 NJPER 372 (1976); Englewood Bd. of Ed., E.D. No. 76-34, 2 NJPER 175 (1975).

Here, Article III and IV of the parties' contract provides for a self-executing grievance procedure culminating in final and binding arbitration. The contract permits the Association, if not satisfied with the results of any step of the grievance procedure, to simply proceed to the next step. In fact, the Association did take Modica's grievance to the next step --it filed for arbitration.

Based on the foregoing, I find that the allegations in the charge, even if true, do not constitute violations of the Act. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 29, 1992
Trenton, New Jersey