

D.U.P. NO. 94-44

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

In the Matter of

TRENTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. C0-94-161

TRENTON EDUCATIONAL SECRETARIES ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses charges filed against the Trenton Board of Education. The charge against the Board alleged that it violated N.J.S.A. 34:13A-24 of the Act by imposing a two-day suspension on a unit member, without first negotiating a schedule of acts, omissions and penalties with the Association. The Director finds that the statute, by its clear terms, does not prevent employers from imposing such discipline in the absence of negotiated disciplinary schedules.

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Appearances:

For the Respondent,
Sumners, Council, George & Dortch, attorneys
(Thomas W. Sumners, Jr., of counsel)

For the Charging Party,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Richard A. Friedman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On November 24, 1994, the Trenton Educational Secretaries Association filed an unfair practice charge with the Public Employment Relations Commission. The charge alleges that the Trenton Board of Education violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Public Employer-Employee Relations Act,

^{1/} These subsections prohibit public employers, their agents or representatives from: "(1) Interfering with, restraining or coercing 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.

N.J.S.A. 34:13A-1 et seq. when it imposed a disciplinary suspension on a unit member in the absence of a negotiated schedule of penalties.

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 is the majority representative of secretaries employed by the Board. The charge alleges that on or about October 20, 1993, one of the Association's members was charged

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.

with assaulting another employee and suspended for two days without pay. The Association argues that the Board violated N.J.S.A. 34:13A-24 by suspending the employee and that its actions also constitute a unilateral change in terms and conditions of employment without negotiating such changes with the Association.

N.J.S.A. 34:13A-24 provides:

a. Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate collective bargaining unit, an employer shall have the authority to impose minor discipline on employees. Nothing contained herein shall limit the authority of the employer to impose, in the absence of a negotiated agreement regarding minor discipline, any disciplinary sanction which is authorized and not prohibited by law. (Emphasis added)

b. The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any act or omission warranting imposition of minor discipline.

c. Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S. 18A:6-10.^{5/}


There is no allegation that the discipline imposed was not otherwise authorized by law e.g., Title 18A.^{6/} Accordingly, by the terms of §24, the employer has the right to impose discipline in the absence of a negotiated agreement.

^{5/} The historical note to this subsection did not require the reopening of any negotiated agreement in existence on January 4, 1990.

^{6/} If the charging party alleges the discipline is not authorized by Title 18A, it would seem that the proper forum to resolve that dispute would be before the Commissioner of Education.

The Commission's complaint issuance standard has been met and I will not issue a complaint on the allegations of this charge.^{7/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: May 5, 1994
Trenton, New Jersey