

D.U.P. NO. 92-7

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

In the Matter of

JACKSON TP. BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-91-126

JACKSON TP. ADMINISTRATOR'S
ASSOCIATION,

Charging Party.

The Director of Unfair Practices declines to issue a complaint on allegations filed by the Jackson Township Administrator's Association that the Jackson Township Board of Education refused to process a grievance filed by one of its members. The Director finds that the parties' collective bargaining agreement provides for a self-executing grievance procedure. Since the Association has not alleged that its ability to proceed with its grievance was in any way interfered with by the Board, no facts are alleged that constitute an unfair practice.

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Appearances:

For the Respondent,
Carroll & Weiss, attorneys
(Russell Weiss, Jr., of counsel)

For the Charging Party,
New Jersey Principals & Supervisors Association
(Wayne J. Oppito, attorney)

REFUSAL TO ISSUE COMPLAINT

On November 29, 1990, the Jackson Township Administrator's Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the Jackson Township Board of Education ("Board"). The Charge alleges violations of subsections 5.4(a) (1), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/} The Association asserts that the Board refused to process a grievance filed by one of its members.

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

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/}

1/ Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission."

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.

For the reasons set forth below, I do not believe that the Commission's complaint issuance standards have been met.

On August 7, 1990, shortly after resigning from his position as principal, Association member Robert Pollock ("Pollock") filed a first step grievance with the Superintendent of Schools. The grievance alleged a breach of Article 7, paragraph E, of the parties' collective negotiations agreement that reads as follows:

The parties agree that total pro-rated cash payment for accumulated earned vacation time (accumulated during a particular year) shall be paid to any administrator who resigns or retires prior to the completion of the contract year, as long as proper written notice has been given to the Superintendent of Schools (sixty (60) days).

Article 17 of the agreement provides for a three step grievance procedure characterized as follows:

Step 1: An Association member may present a complaint in writing to the Superintendent with a copy to the Association. The Superintendent's response is due in writing to the grievant and the Association within five days.

Step 2: The Association may appeal the grievance to the Board in writing after five days. The Board's response is due in writing within twenty days.

Step 3: If the Board's decision does not resolve the grievance, the Association may submit the grievance to arbitration by notifying the Board in writing within 10 days after the decision is rendered.


On August 22, 1990, the Superintendent denied Pollack's grievance. On October 2, 1990, Pollock wrote a letter requesting a meeting with the Board to resolve the issue raised by his grievance. The Board denied Pollock's request on October 23, 1990,

arguing that pursuant to the grievance article of the parties collective bargaining agreement, only the Association may bring a second step grievance. In addition the Board asserts that the appeal to the Board was untimely.

An employer's refusal to respond to a grievance, or the incorrect processing of a grievance at any particular step of the grievance procedure, will not be treated as an unfair practice when the contract grievance procedure is self-executing and culminates in binding arbitration (that is, either side may unilaterally invoke binding arbitration). 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 Voc. Schl. Bd. of Ed., D.U.P. No. 78-11, 4 NJPER 222 (¶4112 1976); Englewood Bd. of Ed., E.D. No. 76-34, 2 NJPER 175 (1975). Since the Association has not alleged that its ability to proceed with its grievance has in any way been hindered by the Board, it appears that the charge fails to allege facts which may constitute an unfair practice. See City of Pleasantville, D.U.P. No. 77-2, 2 NJPER 372 (1976).

The Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations of this charge. The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: October 11, 1991
Trenton, New Jersey