

D.U.P. NO. 94-46

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

In the Matter of

HARDYSTON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-94-172

HARDYSTON EDUCATION ASSOCIATION/NJEA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint and dismisses unfair practice charges filed by the Hardyston Education Association against the Hardyston Board of Education. The Association alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(5) by changing the method of payment of the student council advisor and by failing to properly process the Association's grievance. The Director found that the first allegation was merely a claimed breach of contract, and not an unfair practice. State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The Director also found that the Board had met its obligation to consider the Association's grievance.

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Appearances:

For the Respondent,
Morris, Downing & Sherred, attorneys
(M. Richard Valenti, of counsel)

For the Charging Party,
Michael R. Mulkeen, UniServ Field Representative

REFUSAL TO ISSUE COMPLAINT

On December 3, 1994, the Hardyston Education Association/NJEA filed an Unfair Practice Charge with the Public Employment Relations Commission. The Association alleges that the Hardyston Township Board of Education violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(5)^{1/} by unilaterally altering the terms and conditions of employment for a unit position.

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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."

The Board and Association have a current negotiations agreement effective from July 1, 1989 through June 30, 1994. Article XXXIX-B provides a stipend schedule for extra-curricular activities. This schedule contains six steps for each extra-curricular activity. The student council advisor is entitled to compensation at step 1--\$600.00; step 2--\$700.00; step 3--\$900.00; step 4--\$1,100.00; step 5--\$1400.00; and step 6--\$1500.00. Article XXXIX-B does not contain any other explanatory notes or provisions.

The agreement also contains a multi-step grievance procedure, as follows:

C. Procedure

3. Level One

An employee with a grievance shall first discuss it with the Superintendent, either directly or through the Association's designated Representative, with the objective of resolving the matter informally within twenty school days.

4. Level Two

(a) If the grieved [sic] person is not satisfied with the disposition of his/her grievance at Level One, or if no decision has been rendered within (5) five school days after presentation of the grievance, he or she may file the grievance in writing with the Superintendent. The Association shall be notified of all decisions when rendered.

5. Level Three

(a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days

after the grievance was delivered to the Superintendent, he may within five (5) school days after a decision by the Superintendent or fifteen (15) school days after the grievance was delivered to the Superintendent, whichever is sooner, request in writing that the Chairperson of the Grievance Committee submit his grievance to the Grievance Committee of the Board. If the Committee determines that the grievance is meritorious, it may submit the grievance to the Grievance Committee of the Board within fifteen (15) school days after receipt of a request by the aggrieved person.

(b) Within ten (10) school days after receipt of written notice of the grievance, the Grievance Committee of the Board shall meet with the Committee to attempt resolution of the grievance.

(c) Within ten (10) school days if no solution is rendered under the provisions of item "B", the Committee will meet with the entire Board.

(d) If no solution is reached under "C" the parties expressly agree that the resolution of the conflict shall be at the sole discretion of the Board.

In years prior to September 1993, the Board hired two student council advisors who shared the scheduled stipend amount. Thus, at step 1, the two advisors together received \$300 per year. This arrangement was never grieved by the Association, nor was it challenged by the filing of an unfair practice charge. In September 1993, the Board hired two new student council advisors and agreed to pay them each \$1,000.00. At some point in the Fall 1993, the Board changed that amount to conform with step 4--\$1,100.00.

The Association attempted to clarify and grieve the Board's actions but by the time the Association formally filed Step 1, the

Board had concluded the matter. On October 20, November 2, and November 10, 1993, the Association wrote to the superintendent requesting information and an opportunity to discuss the issues raised. The superintendent denied these requests; asserted that the Association did not properly adhere to the contract in that it had referred the matter to an "unauthorized" NJEA uniserv representative and had not come to him directly for an informal discussion. Eventually, on November 9, 1993, the superintendent acknowledged the authority of the uniserv representative to represent the Association and sent him a letter with an explanation for the Board's decision to pay the student council advisors \$1,000 per year per teacher.

The Board claims that its change from paying two employees half the scheduled amount each, to paying two employees the full scheduled amount each was justified by the fact that there would be an expansion of the student council program with greater emphasis on community involvement.

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

^{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,

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/}

This charge presents two issues: first, did an obligation to negotiate arise when the Board decided to pay two new student council advisors at the full fourth step stipend rate, an action which was at variance with the past practice of paying two teachers half of the appropriate stipend rate? The Board hired two new student council advisors in the fall of 1993 and paid them each the full amount at the fourth step stipend rate. This payment procedure differs from the past practice under which two teachers each received only half the negotiated step amount. There is no dispute that the Board has a managerial prerogative to determine the number of student council advisors needed. There is also no dispute that

2/ Footnote Continued From Previous Page

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.

the Board should pay the negotiated stipend amount for student council advisers.

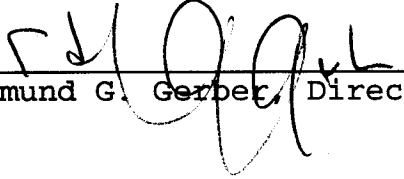
The Association claims that the Board had an obligation to negotiate over the change in compensation. However, there is a specific contract provision as to compensation for the position. Accordingly, this is, at most, a claim of a breach of contract. Such a claim is not an unfair practice. Op. of Barnegat, D.U.P. No. 91-19, 17 NJPER 172 (¶22071 1992); State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

The second issue is whether the Board violated the Act by refusing to process the Association's grievance. The superintendent's letters, attached to an amendment to the charge, show that he refused to meet with the Association or discuss the issue until November 9, 1993. In his November 9th letter, he gave an explanation about the compensation being paid for the student council advisor position in the 1993-94 school year. This letter was dated the same day that the Board voted on and implemented the student council advisor compensation arrangement and one day before the Association's formal filing of a grievance on the issue. However, by its first two letters, the Association was able to present the issue and by the November 9th and 15th letters, it received a disposition of the matter from the superintendent. I find that the Board met its obligation under N.J.S.A. 34:13A-5.4 and 5.3 when it considered the issue brought by the union's

correspondence and issued a response. See West Windsor Tp. v. PERC, 78 N.J. 98 (1978).^{5/}

Based upon all of the above, I find that this charge fails to allege a violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Accordingly, I decline to issue a complaint and dismiss the charge in its entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: May 20, 1994
Trenton, New Jersey

^{5/} Although it never formally amended its charge, in a letter to a P.E.R.C. staff agent, the Association also claims that the Board effectively created a new title. It relied on the Board's assertion that there were drastic program changes which justified paying the full step amount to the two teachers filling the student council advisors role. However, the Association failed to allege any facts as to specific duties which would support its claim that the student council advisors position is a new title. N.J.A.C. 19:14-1.3(a) (3 states that a charge shall contain clear and concise statement of the facts. Since no facts were alleged, I cannot accept this assertion as an amendment to the charge.)