

D.U.P. NO. 85-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

TEANECK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-84-213

TEANECK EDUCATIONAL SECRETARIES
ASSOCIATION, LOCAL 4048, NJSFT,
AFT, AFL-CIO,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to the Charging Party's allegations that the Board has refused to negotiate with respect to certain office aides represented by the Charging Party. The allegations of fact in the charge were internally inconsistent in that the Charging Party admitted that negotiations had taken place between the parties and that a Notice of Impasse had been filed with the assignment of a mediator. There is no indication that the Board has refused to engage in the Commission's impasse procedures.

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Appearances:

For the Respondent
Greenwood & Sayovitz, attorneys
(Clement H. Berne of counsel)

For the Charging Party
Fougeres R. Ferrier, Staff Representative, NJSFT

REFUSAL TO ISSUE COMPLAINT

On March 1, 1984, the Teaneck Educational Secretaries Association, Local 4048, NJSFT, AFT, AFL-CIO ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission"). The charge alleges that the Teaneck Board of Education ("Board") has violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"),

specifically, §§ 5.4(a)(1), (2), (3), (5) and (7), ^{1/} by refusing to negotiate with respect to certain office aides represented by the Association.

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 charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned 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,

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

may constitute an unfair practice within the meaning of the Act and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

The Unfair Practice Charge states that the Association and the Respondent Board are parties to a collective negotiations agreement covering terms and conditions of employment from July 1, 1982 through June 30, 1985. On on June 17, 1983, the Director of Representation issued a decision concerning a Petition for Clarification of Unit in which it was determined that office aides shared a community of interest with the secretaries represented by the Association and that they would henceforth be included within the Association's unit. ^{5/} Since September 15, 1983, the Association has been in negotiations with the Board concerning the aides. On October 31, 1983, the Association filed a Notice of Impasse with the Commission and a mediator was assigned.

The specific unfair practice alleged is that: "The Board, through its representative, refused to negotiate and wants to reduce all the benefits and change all the terms and conditions of employment that these employees are currently enjoying."

On March 16, 1984, the Board filed its response. It denies having refused to negotiate with the Association and claims

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

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

^{5/} In re Teaneck Bd. of Ed., D.R. No. 83-35, 9 NJPER 387 (¶ 14175 1983).

that it continues to make itself available for negotiations. It further claims that this matter is currently pending before a Commission mediator and that the charge should be dismissed.

For the foregoing reasons, the undersigned declines to issue a complaint. The allegations of fact in the Association's charge appear to be internally inconsistent. While the Association claims that the Board has refused to negotiate, it also admits that negotiations have taken place and that a Notice of Impasse has been filed, with the assignment of a mediator. There is no allegation that the Board has refused to engage in the Commission's impasse procedures.

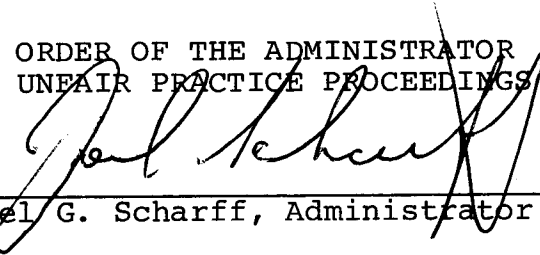
In light of the above, the undersigned cannot conclude that the specific allegations of the charge, as it has been prepared, even if true, may support the claim of a "refusal to negotiate." Moreover, no factual basis is asserted for the claim that the Board wants to change and/or reduce all current benefits. ^{6/} While the parties' negotiations may not be going as smoothly as desired, the parties have been using a mediator to aid them in

^{6/} Under the Commission's complaint issuance standards, the allegations of the charge are assumed to be the facts. The undersigned cannot assume additional facts. Moreover, the undersigned cannot accept assertions that are essentially factual conclusions. On the specific claims made herein the undersigned cannot accept the stated "fact" that the Board has "refused to negotiate" with the Charging Party. The claim that the Board wants to change and/or reduce existing benefits is a factual conclusion and is absent of any concrete examples, such as actual Board proposals, tending to support such conclusion.

reaching a settlement and there has been no refusal to negotiate on the part of the Board.

Accordingly, for the above reasons, the undersigned declines to issue a complaint. 7/

BY ORDER OF THE ADMINISTRATOR
OF UNEFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: July 5, 1984
Trenton, New Jersey

7/ The undersigned further finds that the allegations in the charge do not support complaint issuance on a §§ 5.4(a)(1), (2), (3), or (7) theory.