

E.D. No. 76-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF EAST WINDSOR
REGIONAL SCHOOL DISTRICT,
Respondent,

- and -

Docket No. CO-60

HIGHTSTOWN EDUCATION ASSOCIATION, a/w
NEW JERSEY EDUCATION ASSOCIATION,
Charging Party.

SYNOPSIS

The Executive Director refuses to issue a complaint in an unfair practice proceeding, finding that further processing of the case should be held in abeyance pending submission of the parties' dispute to their contractual grievance procedure, terminating in binding arbitration. The dispute revolves around differing interpretations of a specific provision in the parties' contract. The Executive Director finds that the contractual definition of a "grievance" is clearly broad enough to encompass the dispute, and that it is "reasonably probable that the instant dispute will be resolved under the parties' grievance and arbitration machinery." Jurisdiction is retained for the limited purpose of entertaining a request for further consideration in the event that the contractual procedures fail to produce a settlement or an arbitration award, or that the procedures or the award have not been fair and regular or have reached a result "repugnant to the Act".

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REFUSAL TO ISSUE COMPLAINT

An unfair practice charge was filed with the Public Employment Relations Commission (the "Commission") by the Hightstown Education Association, a/w New Jersey Education Association (the "Association") on March 19, 1975 alleging that the Board of Education of East Windsor Regional School District (the "Board") has engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (2).^{1/} Upon receipt of the charge, the parties were requested to submit, inter alia, copies of their collective negotiations agreement and written statements of position with respect to the allegations of the charge. Following receipt of the foregoing, an exploratory conference was held on July 23, 1975 for the purpose of clarifying the issues and exploring the possibility of voluntary resolution and settlement of the case.

In its charge, the Association alleges that in the course of the

^{1/} These subsections prohibit employers 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."

processing of group grievances, filed by it on behalf of certain high school teachers with the Board pursuant to the grievance and arbitration provisions of their agreement, the Superintendent of Schools directed the Board's supervisory agents in each of its school buildings to conduct meetings with teaching staff members to determine their views as to the merits of the grievances, and that such meetings were subsequently held. These meetings and the interrogation of teachers which thereupon took place, are alleged to have restrained the employees in the exercise of the rights guaranteed them by the Act and to have interfered with the existence and administration of the Association, in violation of the Act.

It is undisputed that the Association, as majority representative of a unit of all classroom teachers and other staff members, and the Board, are parties to a negotiated agreement covering said employees from July 1, 1973 until June 30, 1976. That agreement contains a grievance procedure which defines a "grievance" as a "...claim by a teacher or the Association based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions affecting a teacher or a group of teachers..." (Article III A.1.). The contract provides for a five level grievance procedure culminating in binding arbitration as follows, in pertinent part:

"5. Level five -

- "(a) Any grievance supported by the (Association's) Professional Relations Committee and not resolved to the satisfaction of the employee after review by the Committee of the BOARD (Level four) shall, at the request of the Professional Relations Committee, be submitted to arbitration by the American Arbitration Association.

* * *

"The arbitrator shall limit himself to the issues submitted to him and shall consider nothing else. He can add nothing to, nor subtract anything from the agreement between the parties or any policy of the BOARD. The decision of the arbitrator shall be final and binding...."

The grievance and arbitration clause also authorizes the filing of group grievances, the processing of which shall commence at Level two. At Level two the grievance is presented to the Superintendent of Schools, who "shall request a report on the grievance from the principal in writing, shall confer with the concerned parties, and, upon request, with the employee or principal separately. He shall attempt to resolve the matter as quickly as possible but within a period not to exceed ten school days. The Superintendent shall communicate his decision in writing, along with supporting reasons, to the employee and the principal." (Article III c. 2.) (emphasis added). It is the intent and meaning of the underlined phrase "shall confer with the concerned parties", which is at the heart of the dispute and of the instant charge.

The Board has taken the position from the outset that pursuant to the contract language, the proper processing of the group grievances filed by the Association permits, even requires, the Board to confer with those teachers who are the subject of, or who will or may be affected by, the grievances, and that in reliance upon the language "shall confer with the concerned parties", such consultation is privileged. On the other hand, the Association has consistently argued that the "concerned parties" with whom the Superintendent shall confer in his consideration of an Association grievance is limited to the managerial or supervisory agents of the Board

whose actions are the object of the grievance, and the Association representatives who are pressing the grievance.

At this time it is the function of the undersigned, as the Commission's named designee,^{2/} to determine whether a complaint should issue and formal proceedings instituted. Pursuant to N.J.A.C. 19:14-2.1, as amended:

After a charge has been filed and processed, if it appears to the Commission or its named designee that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, 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, the Commission or its named designee shall issue and cause to be served on all parties a formal complaint....

Upon review of the charge and the parties' submissions, it appears to the undersigned that the allegations of the Association, if true, may constitute unfair practices on the part of the Board, but that formal proceedings in respect thereto should not be instituted at this time. The undersigned concludes that in the interest of the parties, the employees involved herein, and the public, and in furtherance of the purposes underlying the Act, further processing of the Association's charge is not warranted at this time and these proceedings should be held in abeyance pending submission of the parties' dispute to the grievance and arbitration procedures contained in their agreement.

It is clear that the issue of contract interpretation raised by the opposing positions of the parties, is subject to resolution by the grievance procedure which the parties have voluntarily agreed to follow

^{2/} See, 7 N.J.R. 78(a) (February 6, 1975).

and which, as earlier noted, can result in a binding arbitration award. The broad contractual definition of grievances, encompassing not only claims based upon the interpretation, application or resolution of the agreement, but also of policies or administrative decisions affecting a teacher or group of teachers, strengthens the conclusion that the parties intended to choose their contractual grievance and arbitration machinery as an appropriate forum for resolving contract disputes. As it is reasonably probable that the instant dispute will be resolved under the parties' grievance and arbitration machinery, they should first seek its resolution in the manner prescribed therein.^{3/} The Act provides that "the Commission shall have exclusive power...to prevent anyone from engaging in any unfair practice". Inherent in this power is the judicious exercise of reasonable discretion in the initial processing of the charge. In the judgment of the undersigned, deferral of further processing at this time to the parties' consensual grievance and arbitration machinery, will provide an expeditious and fair means of disposing of the dispute, and if ultimately resulting in an arbitrator's award, will have the added benefit of providing the parties with the special skills and experience of an expert neutral examining the provision at issue in light of the parties' established collective negotiations relationship.

The course taken herein, favoring voluntary settlement of labor disputes through the grievance and arbitration process, finds specific

^{3/} In recognition of the essentially contractual nature of their dispute, both parties agreed that they will process the dispute under the grievance and arbitration provisions of their contract if the Commission determines that further processing of the Association's charge should await such an effort.

support in the policy declaration of the Act, N.J.S.A. 34:13A-2,^{4/} in the interplay between the duty of public employers and employee organizations to negotiate in good faith, and in their concomitant responsibility to utilize their own voluntarily created grievance procedures to resolve disputes subject to such procedures.^{5/}

While deferral of the instant dispute at this time to the processes for resolution voluntarily established by the parties is the preferred course of conduct, the Commission shall retain jurisdiction of the charge, while that process is being pursued. Retention of jurisdiction will permit the Commission to re-enter the dispute to entertain an application submitted at the appropriate time which either asserts the failure to promptly pursue the dispute to resolution under the parties' own machinery, or lack of fairness in the grievance and arbitration process, or an arbitration determination repugnant to the Act. Surely if such a claim, ultimately asserted, raises valid issues as to whether the grievance and arbitration process

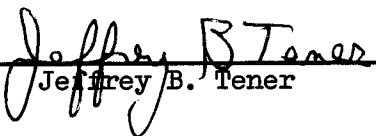
^{4/} N.J.S.A. 34:13A-2 provides as follows: "It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lock-outs, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination."

^{5/} See, for example, the recent additions to N.J.S.A. 34:13A-5.3, enacted in Section 4 of P.L. 1974, c. 123: "***Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement."

undertaken has been consistent with due process or whether ultimate disposition can reasonably be reconciled with the Commission's exclusive mandate to prevent unfair practices, the Commission should be able to determine whether it will defer to the arbitrator's award.

Without prejudice to either party, the undersigned accordingly hereby refuses at this time to issue a complaint herein. Jurisdiction of the charge shall be retained for the purpose of entertaining an appropriate and timely application for further consideration upon a proper showing that (a) the dispute has not with reasonable promptness after the issuance of this determination, either been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular, or (c) the grievance or arbitration procedures have reached a result which is repugnant to the Act.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener

Dated: Trenton, New Jersey
October 21, 1975