

D.U.P. NO. 2023-20

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

In the Matter of

WARREN HILLS REGIONAL BOARD OF EDUCATION,
Respondent,

-and-

Docket No. CO-2023-112

WARREN HILLS REGIONAL EDUCATION ASSOCIATION,
Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Warren Hills Education Association (Association) against the Warren Hills Board of Education (Board). The charge alleges the Board violated N.J.S.A. 34:13A-5.4a(5) and (1) by unilaterally changing the teaching schedule to reflect an increase in student contact time and an increase in the workday. In response, the Board contended the parties already negotiated the subject of student contact time and length of work day in Article VIII of the parties' collective negotiations agreement. According to the Board, the charge must be resolved by the parties negotiated grievance procedures because it raises a contractual dispute over the interpretation and application of Article VIII. The Director declined to exercise jurisdiction over the charge since the charge essentially alleged a breach of contract claim that must be resolved in accordance with the parties negotiated grievance procedure.

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Appearances:

For the Respondent,
Schenck, Price, Smith & King, LLP, attorneys
(Joseph L. Roselle, of counsel)

For the Charging Party,
Oxfeld Cohen, attorneys
(Randi Doner April, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 5, 2023 the Warren Hills Education Association (Association) filed an unfair practice charge against the Warren Hills Board of Education (Board). The charge alleges that in September 2022, the Board violated section 5.4a(5) and, derivatively, 5.4a(1)^{1/} of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when it changed

^{1/} These provisions prohibit 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. (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 schedule to reflect a new "zero" period. The Association claims the teachers need to be at school earlier as a result of the scheduling change and that student contact time has increased.

The Board denies the charge. It contends that the Commission lacks jurisdiction to process this charge and should defer the charge to the parties' negotiated grievance procedure. According to the Board, the parties have negotiated over the subject of student contact time and length of work day, as set forth in Article VIII of the parties' collective negotiations agreement (Agreement). The Board asserts that the Association's charge raises a contractual dispute over the interpretation and application of Article VIII. The Board contends that the changes that were made for the 2022-2023 school year did not add any time to the schedule or increase student contact time.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

On March 7, 2023, I issued a second letter to the parties expressing my intent to defer the matter to the parties negotiated grievance procedure. The charging party objected by letter dated March 8, and relies upon its position statement dated January 13, 2023. The Respondent relies on its position statement dated February 21, 2023.

I find the following facts.

The Association is the exclusive majority representative of teaching staff members and other classifications of employees employed by the Board. The Board and Association are parties to a collective negotiations agreement extending from July 1, 2021 through June 30, 2024.

On or about September 2022, the Board made certain changes to the High School schedule for the 2022-2023 school year.^{2/} More specifically, the Board consolidated certain periods and added a period "zero", which requires teachers to meet with students for twenty minutes beginning at 7:25 a.m., the start of their contractual day. Prior to the change, teachers were not required to meet with students beginning at 7:25 a.m. Article VIII of the parties' Agreement provides:

^{2/} The Association maintains that during negotiations for a successor Agreement, the Board promised there would be no schedule changes for the 2022-2023 school year. The Board denies this.

Article VIII, Time Requirements

A. Certificated Instructional and
Certificated Non-Instructional Staff- WORKING
HOURS

As professionals, staff are expected to devote to their assignments the time necessary to meet their responsibilities. Staff shall indicate his/her presence at the beginning and end of the workday according to the procedure established by the Board of Education.

1. The Certificated Instructional Staff and Certificated Non-Instructional Staff school day shall be no more than 7 hours and 20 minutes in length. The members day may be extended under stipends for assignments provided for in this agreement and agreed to voluntarily by the teacher and administration. The teachers who extend their day by their own volition will not be compensated.

2. Certificated Instructional Staff student contact time shall be no more than 267 minutes per average day and no less than 190 minutes per day.

3. Certificated Instructional Staff student contact time includes but is not limited to: classroom instruction, homeroom, study hall duty supervision, lunch duty supervision, and library duty supervision.

The parties dispute whether the changes have caused an increase in student contact time in violation of the parties' Agreement. On January 9, 2023, the Association filed a grievance^{3/} that states the following:

^{3/} Docket # AR-2023-301

Issue: The District has unilaterally implemented a new high school schedule increasing the length of the school day, the amount of student contact time, and the number of duty/preparatory periods violating the negotiated agreement.

Remedy: The District shall follow the negotiated agreement and, anything else the arbitrator deems appropriate to make all impacted members whole.

The parties are scheduled to adjudicate the grievance before Arbitrator Joan Parker on May 22, 2023.

Section 5.3 of the Act requires a public employer and majority representative to use the grievance and disciplinary review procedures established by their collective negotiations agreement for any disputes covered by the terms of that agreement. N.J.S.A. 34:13A-5.3.

In State of New Jersey (Dept. of Human Svcs.), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission expressed a preference for deferral to a negotiated grievance procedure ending in binding arbitration, “. . . when a charge essentially alleges a violation of subsection 5.4a(5) interrelated with a breach of contract claim.” The Commission wrote:

The breach of a collective negotiations agreement is not enumerated as an unfair practice. We deem this omission to be significant and to evidence a legislative intent that claims merely alleging a breach of contract based on apparent good faith differences over contract interpretation would not, even if proven, rise to the level of a refusal to negotiate in good faith under

subsection 5.4(a)(5). Rather than make such claims the subject of unfair practice proceedings, our Legislature has indicated that such claims must be resolved, if possible, through the parties' agreed-upon grievance procedures (citations omitted). [Id., 10 NJPER 421]

The Commission also warned that it “. . . will not permit litigation of mere breach of contract claims in the guise of unfair practice charges.” Id. 10 NJPER 422. The parties should not be entitled to substitute the Commission for a grievance procedure agreed upon as the method for resolving a contractual dispute.

In Human Services, the Commission specified circumstances in which an alleged breach of contract could “. . . rise to the level of a refusal to negotiate in good faith.” For example, claims of contract “repudiation” and charges revealing “specific indicia of bad faith” may warrant the exercise of the Commission's jurisdiction.

The Association alleges that the Board violated Article VIII of the Agreement when it changed the schedule at the High School. The Board disagrees, contending that the changes that were made were within its rights under the Agreement.

The sole issue in dispute is contractual: did the Board violate Article VIII(A) of the Agreement when it made changes to the high school schedule? The parties have a good faith dispute over the interpretation and application of Article VIII. As

Article XX of the Agreement states, a grievance is a "claim by a member or the association based upon the interpretation, application, or violation of this agreement, policies, or administrative decisions affecting terms and conditions of employment." The purpose of the procedure, culminating in binding arbitration, "is to resolve differences concerning the interpretation of the parties' contractual rights, which may from time to time, arise affecting the member or association."

Considering section 5.3 of the Act, Human Services, and Articles VIII and XX of the Agreement, I am reluctant to substitute our unfair practice jurisdiction for the parties' grievance procedure in order to resolve a contractual dispute.

An arbitrator shall be able to fully resolve the dispute as set forth in the charge. Furthermore, because the grievance is further along in the process, Arbitrator Parker will most likely decide the issue in dispute prior to a Hearing Examiner deciding the unfair practice charge. Therefore, this Commission cannot afford the Association "a second bite at the apple" by allowing it to relitigate the issue here should they receive an adverse award from Arbitrator Parker. County of Hudson Department of Corrections (Dowling), D.U.P. No. 2001-12, 27 NJPER 64 (¶ 32028 2000).

For these reasons, I defer this matter to the parties' negotiated grievance procedure for resolution. I find that the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge.

ORDER

The unfair practice charge is dismissed.

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Director of Unfair Practices

DATED: March 21, 2023
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by March 31, 2023.