

D.U.P. NO. 2024-4

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

In the Matter of

PINELANDS REGIONAL BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-2022-133

PINELANDS EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Pinelands Education Association against Pinelands Regional Board of Education. The charge alleges that the Board's Superintendent refused to provide certain information related to COVID-19. The Director concludes that the complaint-issuance standard has not been satisfied since the charge was filed only two days after the Association specifically requested the information, and therefore, the Board did not have an opportunity to provide the information in a reasonably prompt manner before the charge was filed. The Director also finds that the allegations do not satisfy the pleading requirements.

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Appearances:

For the Respondent,
Cooper Levenson, PA, attorneys
(Kasi Marie Giford, of counsel)

For the Charging Party,
Mellk Cridge, LLC, attorneys
(Edward Cridge, of counsel)

REFUSAL TO ISSUE COMPLAINT

On December 15, 2021, the Pinelands Education Association (the Charging Party or Association) filed an unfair practice charge and an amended charge on the same date against Pinelands Regional School District Board of Education (Respondent or Board). As amended, the charge alleges that on December 13, 2021, the Association requested that the Respondent's superintendent provide the Association with the number of weekly positive COVID-19 cases among staff and students as well as those required to quarantine in the school district. The amended

charge also alleges that on an unspecified date, the superintendent refused to provide the Association with the requested information, and therefore violated subsections 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act.^{1/}

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-5.4c; 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).

I find the following facts.

The Board is a public employer within the meaning of the Act. The Board and the Association are parties to a collective negotiations agreement (CNA) that extended from July 1, 2018 through June 30, 2021. The Association represents a broad-based

^{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; and (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."

negotiations unit comprised of non-supervisory employees, including teaching staff, counselors, aides and custodial staff.

On Monday December 13, 2021, the Association President, Mel Reid, sent an email^{2/} at 9:53 a.m. to Respondent's superintendent, Dr. Melissa McCooley, entitled "covid related absences." Association President Reid wrote the following:

Dr. McCooley,

As the number of student absences are increasing, as well as the number of COVID positive cases and close contacts, I ask that you send the numbers of positive staff and student numbers to me as majority representative. Association members and leadership have a right to know these numbers, as does the community, as this is a health and safety concern. Please send us those numbers for the past three weeks as well as the daily numbers going forward. The daily numbers can be sent on Friday of each week if that is easier.

Roughly two business days later, the Association filed the instant charge.

ANALYSIS

The Commission has relied upon federal precedent in holding that "[e]mployers have a duty to respond to relevant requests for information in a timely manner or to adequately explain why the information will not be furnished. Regency Service Carts, Inc and Shopmen's Local Union No. 455, 345 NLRB 671, 673 (2005).^{3/}

^{2/} This email was provided by the Association.

^{3/} It is appropriate to refer to the experience under the
(continued...)

An unfair practice may occur if an employer does not provide the requested information 'reasonably' promptly. NLRB v. John S. Swift Co., 277 F.2d 641, 645 (7th Cir. 1960).” City of Newark, P.E.R.C. No. 2010-11, 35 NJPER 298 (¶104 2009). The failure to provide relevant information in a reasonably prompt manner violates 5.4a(5) of the Act and a(1) derivatively. Id. The particular circumstances surrounding the information request, including the extent of the information sought and its availability are considered in assessing whether an employer responded in a reasonably prompt matter. Id.

Here, assuming Superintendent McCooley immediately saw Association President's email, the Association only provided two business days before the instant charge was filed on Wednesday December 15 of the same week. The Association did not wait until Friday, despite Association President Reid's express suggestion that it would be open to receiving the daily positive COVID-19 cases for staff and students on the Friday of each week. Based on the specific factual allegations contained in the amended charge, the failure to provide the requested COVID-19 totals within two business days does not constitute a breach of the

3/ (...continued)
federal Labor-Management Relations Act, 29 U.S.C. 141 et seq., for guidance. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Educational Secretaries, 78 N.J. 1, 9 (1978).

Board's duty under the Act to provide relevant information reasonably promptly.

I also note that the allegations are deficient and conflict with the information sought in the December 13 email from the Association. Although the amended charge alleges a refusal, there are no specific factual allegations describing how or when the Board refused to provide the requested information in that two-day period. N.J.A.C. 19:14-1.3(a); See also New Jersey State Judiciary, D.U.P. No. 2022-8, 48 NJPER 344 (¶77 2022) (explaining the complaint-issuance standard requires a charging party to set forth the "who, what, when and where" information about the commission of an alleged unfair practice.) Additionally, contrary to the allegations in the amended charge, this December 13 communication only asked for the number of student and staff positive cases. No express mention is made of quarantine numbers in the December 13 email, although such a request is alleged to have been made in that email in the amended charge.

Accordingly, I find that the complaint issuance standard has not been met and decline to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.1.

ORDER

The unfair practice charge is dismissed.

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

DATED: August 15, 2023
Trenton, New Jersey

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

Any appeal is due by August 25, 2023.