

D.U.P. NO. 2024-3

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

In the Matter of

LITTLE EGG HARBOR TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-2022-134

LITTLE EGG HARBOR TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Little Egg Harbor Township Education Association against Little Egg Harbor Township 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 before the Local 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.

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Appearances:

For the Respondent,
Comegno Law Group, P.C., attorneys
(Jeffrey R. Caccese, of counsel)

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

REFUSAL TO ISSUE COMPLAINT

On December 15, 2021, the Little Egg Harbor Township Education Association (the Charging Party or Association) filed an unfair practice charge and an amended charge on the same date against Little Egg Harbor Township Board of Education (Respondent or Board). As amended, the charge alleges that in "November 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 November 23, 2021, 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 negotiations unit comprised of all teaching staff.

^{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."

The Association provided a number of documents that it asserts represent the emails in its possession concerning the Association's request for COVID-19 data. The documents total twenty-nine pages, but only various portions of them are highlighted.^{2/} The only November 2021 communication highlighted in the submitted documents does not include a request for weekly positive COVID-19 totals and quarantine numbers. Instead, Association President Jaclyn Finnigan sent an email on Friday November 19, 2021 at 1:20 p.m. inquiring whether "school notices are still going out for confirmed positive cases." No other information is requested beyond this particular question. On Tuesday November 23, 2021, at 7:22 a.m., Superintendent Melissa McCooley answers that the district is no longer issuing those school notices.

On Wednesday December 15, 2021, the Association filed the instant charge alleging that the superintendent refused to provide the Association with the number of weekly positive COVID-19 cases among staff and students as well as those required to

^{2/} The only other highlighted communication not addressed in this decision is an October 8, 2021 email from Association President Finnigan, in which she makes an unspecified demand to bargain "the impact" of an executive order regarding vaccination or testing that was going into effect on October 18, 2021. She also requests the Board's "plan including testing procedures, times, expectations and costs so that we may review." The amended charge does not include any of these factual allegations and does not assert there was a failure to provide that specifically requested information. Therefore, the communication will not be analyzed here.

quarantine in the school district. However, based on the emails provided by the Association, it was not until three days after the charge was filed that the Association made a specific request regarding COVID-19 case numbers. By email on Saturday, December 18, 2021 at 2:56 p.m., Association President Finnigan wrote in pertinent part:

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 cases to me as the 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.

Superintendent McCooley replied the following morning on Sunday December 12, 2021, expressing her bafflement that an unfair labor charge had been filed before the information was requested.

On Thursday January 6, 2022 at 7:15 p.m., Association President Finnigan sent another email to Dr. McCooley seeking "the weekly number of positive cases as well as quarantine numbers for both students and staff."

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/}

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 manner. Id.

In the instant charge, the Board did not have a chance to respond in a reasonably prompt manner to produce the information that was specifically requested in the Saturday December 18 email from the Association as the charge was filed on December 15, which was before it received the information request. Additionally, the Association's November 2021 communication does not expressly seek the number of COVID-19 case numbers, contrary to the allegations in the charge. I also note that the information in the charge conflicts with the documents the

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

Association provided in other ways. For example, the charge alleges that the Association sought both the number of weekly COVID-19 cases for students and staff as well as the quarantine numbers. However, the December 18 communication only sought the "numbers of positive cases" and did not request quarantine numbers. The request for quarantine numbers for students and staff was not raised until three weeks after the instant charge was filed on January 6, 2022.

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 14, 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 24, 2023.

