

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

In the Matter of

NORTH BRUNSWICK TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-80-49

NORTH BRUNSWICK TOWNSHIP
ADMINISTRATIVE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the public employer had made a financial arrangement with an individual member of a negotiations unit. The Director notes that at the time the employer is alleged to have dealt with the individual he was not a member of the negotiations unit. Finally, the allegations do not support a claim that § (a)(4) of the Act had been violated.

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Appearances:

For the Repondent
Borrus, Goldin & Foley, attorneys
(Anthony B. Vignuolo of counsel)

For the Charging Party
Robert M. Schwartz, attorney

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 30, 1980 by the North Brunswick Township Administrative Education Association (the "Association") against the North Brunswick Township Board of Education (the "Board") alleging that the Board was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the

"Act"), specifically, N.J.S.A. 34:13A-5.4(a)(2) and (4). ^{1/}

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. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met.

^{1/} These subsections prohibit employers, their representatives and agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act."

^{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 ... "

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

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

On July 10, 1979, a collective negotiations agreement effective July 1, 1978 through June 30, 1980, was entered into by the Board and the Association. The dispute herein relates to the salary of a principal who had been transferred in 1976 from an assistant superintendent position, thus becoming a member of the Association's negotiations unit.

The Association alleges that during the negotiations for the above agreement, it was unaware of certain purported financial arrangements entered into between the principal and the Board relevant to the transfer, and it asserts that the Board "conducted its own dealings with a member of the Association."

Further, the Association claims that at one point the Board agreed with the Association that the principal would be given the same raise as all other administrators. However, the proposed contract presented to the Association for its ratification did not reflect a salary increase for the principal. The Association requested the Board to delete the salary reference to the principal. The Board rejected this proposal and the Association, in view of the protracted length of negotiations, executed the agreement. The Association, at the same time, advised the Board that it would file an Unfair Practice Charge.

As noted above, the Charge alleges that the Board bypassed the Association and engaged in direct dealings with a unit member. However, it appears that at the time the Board is alleged to have dealt with the individual, he was an assistant superintendent and not a unit member. Thus, there was no impediment to direct negotiations with the individual at that time. Accordingly, there is

no violation of § (a)(2).

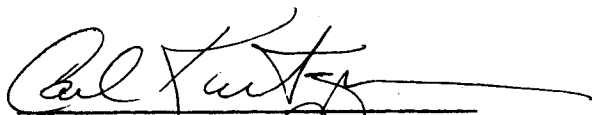
The Board's arrangement, however, would not absolve it of the requirement to negotiate exclusively with the Association over the principal's terms and conditions of employment for the contractual period. However, there is no allegation that the Board refused to so negotiate. Rather, it appears that in the negotiations the Board refused to agree to a salary increase.

Finally, the allegations of the Charge do not support a claim that § (a)(4) has been violated.

Subsequent to the filing of the instant Unfair Practice Charge, by letter dated May 22, 1980, the undersigned notified the Charging Party that in the absence of a withdrawal request or in the absence of the filing of an amended Charge stating factual allegations which would constitute an unfair practice, the undersigned would decline to issue a complaint. The undersigned has not received a reply to the May 22, 1980 letter, nor has the Charge been amended as requested.

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

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: June 4, 1980
Trenton, New Jersey