

D.U.P. NO. 92-20

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

In the Matter of

PRINCETON REG. BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-91-348

PRINCETON REG. SUPPORT STAFF ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the Princeton Regional Board of Education failed to apply a contractual provision requiring termination according to seniority when it rified a non-tenured custodian. The Director finds that the parties were merely engaged in a dispute over the interpretation of contractual language. The fact that the parties contractual grievance procedure prohibits the filing of a grievance in this matter does not put present any of the exceptions to the deferral policy enunciated in State of New Jersey (Dept. of Human Services).

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Appearances:

For the Respondent,  
Sills, Cummis, Zuckerman, Radin, Tischman,  
Epstein & Gross, attorneys  
(Mark J. Blunda, of counsel)

For the Charging Party,  
Zazzali, Zazzali, Fagella & Nowak, attorneys  
(Richard A. Friedman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On June 14, 1991, the Princeton Regional Support Staff Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") charging the Princeton Regional Board of Education ("Board") with violating subsections 5.4(a)(1) and (5)<sup>1/</sup> of the New Jersey

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<sup>1/</sup> These subsections 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."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association alleges that the Board did not act in conformance with the parties' negotiated agreement governing reductions in force when it eliminated a non-tenured custodial position without regard to seniority.<sup>2/</sup>

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 charged.<sup>3/</sup> The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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.<sup>4/</sup>

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<sup>2/</sup> The Association withdrew its amended allegations concerning a second position pursuant to an agreement reached with the Board on October 21, 1992.

<sup>3/</sup> 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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

<sup>4/</sup> N.J.A.C. 19:14-2.1.

The Commission's rules provide that I may decline to issue a complaint.<sup>5/</sup>

For the reasons set forth below, I find that the Commission's complaint issuance standard has not been met.

The parties' current collective negotiations agreement provides that when the Board authorizes a reduction in force in a specific job classification, non-tenured employees in that job classification will be laid off first; if tenured employees must be laid off, they will be terminated according to seniority. While the parties' contractual grievance procedure ends in binding arbitration, a non-tenured employee may not grieve a nonrenewal decision by the public employer.

In April, 1991, the Board reduced the custodial work force; it laid off a non-tenured custodian who had more seniority than other non-tenured custodians who were retained. The Association asserts that the agreement grants non-tenured employees the the same seniority rights as tenured employees. Therefore, in the instance of the April 1991 layoff, the least senior non-tenured custodian should have been laid-off first. The Board argues that although the agreement provides that tenured custodians are to be laid off in accordance with their seniority, there is no such requirement for non-tenured employees. The Board contends that, contractually, it is permitted to lay-off a non-tenured custodian based on criteria other than seniority.

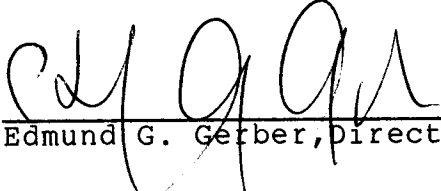
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<sup>5/</sup> N.J.A.C. 19:14-2.3.

In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that where there is a claim of a contract violation, the Commission will not entertain an allegation of a violation of subsection (a)(5) if an employer reasonably relies upon contract language for its actions and does not disregard or repudiate the contract. Here, the Board relies upon the same provision of the agreement that the Association claims has been violated. Nothing in the charge suggests that the Board has repudiated the agreement. Rather it appears that this is merely a good faith dispute over the interpretation of contract language.<sup>6/</sup>

Based upon the foregoing, I decline to issue a complaint and accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: May 21, 1992  
Trenton, New Jersey

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<sup>6/</sup> The Association argues that this matter cannot be grieved. However, the contract, by its own terms, prohibits the filing of a grievance. The impossibility of filing a grievance because of the contract waiver does not transform this matter into an unfair practice.