

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

In the Matter of

BOARD OF EDUCATION OF VOCATIONAL
SCHOOLS IN THE COUNTY OF ESSEX,

Respondent,

-and-

DOCKET NO. CO-78-80

ESSEX COUNTY VOCATIONAL AND
TECHNICAL TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a Motion for Reconsideration of In re Board of Vocational Schools in the County of Essex, D.U.P. No. 78-11, 4 NJPER 222 (11/12 1978), wherein the Director declined to issue an unfair practice complaint. The Charging Party's request for reconsideration was based upon an amendment of its Unfair Practice Charge alleging that the Board of Education refused to respond to an Association grievance. The Director, noting that the Association's grievance procedure allows for the submission of grievances to advisory arbitration, and further noting that the Association did not allege that the employer prevented it from seeking advisory arbitration, determines that the employer's actions did not constitute a refusal to process grievances under the Act.

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Appearances:

For the Respondent,
Richard M. Cignarella, First Assistant County Counsel

For the Charging Party,
Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, of Counsel)

DECISION ON MOTION FOR RECONSIDERATION

On May 31, 1978, the undersigned issued a determination, In the Matter of Board of Education of Vocational Schools in the County of Essex, D.U.P. No. 78-11, 4 NJPER 222 (¶4112 1978), refusing to issue a complaint with respect to the allegations contained in the above-captioned Unfair Practice Charge. In the aforementioned Charge, the Essex County Vocational and Technical Teachers Association (the "Association") alleged that the Board of Education of Vocational Schools in the County of Essex (the "Board") was engaging in unfair practices within the New Jersey Employer-Employee Relations Act, as amended (the "Act"), at N.J.S.A. 34:13A-5.4(a)(5) by refusing to process an Association grievance.

The undersigned, noting a series of Commission decisions applicable thereto, ^{1/} found that the allegations contained in the Charge relating to the Board Superintendent's failure to respond to the grievance did not constitute a refusal to process a grievance. The undersigned observed that, in the absence of an allegation that the Association was prevented from pursuing its grievance through higher levels in the grievance procedure, the failure of the Superintendent to respond to the grievance, in and of itself, was not an unfair practice.

By letter dated June 21, 1978, the Association requested that the undersigned reconsider his decision as to this aspect of the Charge. To support the basis for this request, the Association sought to amend the Charge to include correspondence between the Association and the Board concerning the processing of the grievance. Relying upon this correspondence, the Association asserts that the grievance had been presented at a heigher level of the grievance procedure and that the Board continued to refuse to process the grievance at this level.

Upon careful consideration of the additional allegations set forth in the request for reconsideration, the undersigned is constrained to find that the allegations, including the new allegations contained in the amendment, if true, do not constitute an unfair practice within the meaning of the Act. The current agreement between the parties (July 1, 1976 through June 30, 1979) provides in Article VI that "in the event a teacher or Association is dissatisfied with the determination of the Board, he shall have the right to request advisory arbitration....." Thus, even in the absence of a reply to the grievance from the Board,

^{1/} In re Englewood Bd. of Ed., E.D. No. 76-34, 2 NJPER 175 (1976). See also In re City of Pleasantville, D.U.P. No. 77-2, 2 NJPER 372; In re State of New Jersey & Council of New Jersey State College Locals, NJSFT/AFL/AFL-CIO, D.U.P. No. 77-3, 2 NJPER 373 (1976).

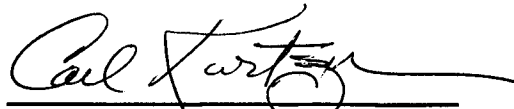
the matter still could have been processed by the Association to a higher level in the agreed grievance procedure. There is no allegation that the grievant or the Association pursued such a request, nor is there any allegation that the Board attempted to prevent the processing of the grievance to the next level of the grievance procedure.

In In re State of New Jersey & Council of New Jersey State College Locals, NJSFT/AFT/AFL-CIO, supra, n. 1, the undersigned stated:

If the grievance terminates in a nonbinding award, the employer maintains its right to reject the award, but that reservation bears no relationship to a charge of "refusing to process a grievance" to arbitration. Regardless of the potential outcome, the employee organization is not precluded from pursuing the arbitration to conclusion ex parte and the grievance will be "processed" to arbitration pursuant to the parties' contract notwithstanding the public employer's failure to take part in that process. 2 NJPER at 374

Accordingly, the undersigned, for the reasons set forth above, determines that the Association's allegations may not constitute an unfair practice and the Association's Motion for Reconsideration is dismissed.^{2/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: October 5, 1978
Trenton, New Jersey

^{2/} In view of the foregoing finding that the allegations of the Charge do not constitute a refusal to process grievances, the undersigned need not determine whether the subject matter of the grievance was in fact properly grievable by the Association. See Township of West Windsor v. PERC and PBA Local 130, ___ N.J. ___ (A-179, Sept. Term 1977, 8/3/78), and Ridgefield Park Education Association v. Ridgefield Park Board of Education, ___ N.J. ___ (A-138, Sept. Term 1977, 8/2/78).