

E.D. No. 76-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MADISON TOWNSHIP BOARD OF EDUCATION,

Respondent,

- and -

Docket No. CO-76-49-44

MADISON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Executive Director declines to issue a Complaint as to that part of the Unfair Practice Charge which alleges an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(7). The Charging Party did not set forth the specific rule which is alleged to have been violated, and the Executive Director is unable to determine from the alleged facts which rule might be involved.

A party alleging an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(7) or (b)(5) must specifically state both the rule and regulation alleged to have been violated and the alleged facts which constitute the violation.

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REFUSAL TO ISSUE COMPLAINT

The Unfair Practice Charge referred to above consists of an initial charge filed on August 21, 1975 and two supplemental charges filed on September 8, 1975 and October 22, 1975 respectively, which amended the original charge. The charge, as amended, alleges that the Respondent has engaged in or is engaging in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a), subsections (1), (3), (5) and (7).

The charge has been processed pursuant to N.J.A.C. 19:14-1.6 of the Commission's Rules and the undersigned, as the Commission's named designee, has reviewed the allegations of the Charging Party and has determined that the Commission's standard for the issuance of a Complaint has been met with regard to possible unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5). See N.J.A.C. 19:14-2.1. However, the undersigned declines to issue a Complaint alleging unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(7).

N.J.S.A. 34:13A-5.4(a)(7) states that:

Employers, their representatives or agents are prohibited from:

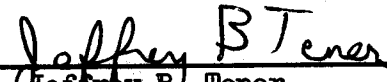
(7) Violating any of the Rules and Regulations established by the Commission.

Nowhere in the initial charge filed on August 21, 1975 or the two supplemental charges which amend the original charge does the Charging Party indicate any rule and regulation which allegedly has been violated. It is the opinion of the undersigned that a party alleging a violation of either N.J.S.A. 34:13A-5.4(a)(7) or (b)(5) (the analogous section applicable to employee organizations) must specifically state the rule and regulation which it claims has been violated in addition to the alleged facts which constitute the violation of that rule.

N.J.A.C. 19:14-1.3 establishes the requirements for the contents and form of an unfair practice charge. Subsection (c) of that rule requires "(a) clear and concise statement of the facts constituting the alleged unfair practice." In alleging a violation of one of the Commission's rules and regulations, this rule must be read to require that the Charging Party state specifically which rule and regulation is alleged to be violated. Minimum requirements of fairness demand that the charged party be put on notice as to the rule which it is alleged to have violated. Additionally, the expeditious and efficient processing of the charge and a determination as to whether a Complaint should issue requires that the staff member assigned and the Commission's named designee be able to analyze the factual allegations in light of the rule and regulation alleged to be violated. The burden of attempting to determine which of the Commission's rules and regulations might be violated by an alleged set of facts should not fall on the Respondent or the Commission but more properly belongs with the Charging Party. In the within case, no rule has been set forth nor has the undersigned been able to determine from his reading of the allegations in the charge, as amended, which rule might

be involved. If these alleged facts might constitute an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(7), the undersigned is unable to determine which it might be.

Therefore, the undersigned, pursuant to N.J.A.C. 19:14-2.3, hereby declines to issue a Complaint with regard to the allegations of an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(7).



Jeffrey B. Tener
Executive Director

DATED: November 26, 1975
Trenton, New Jersey

ATTACHMENT "A"

The following questions have reference to CU-76-8. I have attempted to indicate references to other personnel employed in the District wherever appropriate. Any documentation that can be provided would be appreciated.

1. What is the definition of a Support Teacher?
Supplemental Teacher?
Substitute Teacher?
Bedside Teacher?
Other?

Is there a job description for above groups?
2. Is there a certification requirement for Support Teachers?
If not, are they certified?

Other personnel?
3. How long have Support Teachers been employed in the system?
(Under other titles?)
4. How many Support Teachers were employed each year that there have been Support Teachers?
5. Are Support Teachers offered a contract? (If not, how are they offered and how do they accept employment?)
6. Are Support Teachers employed under the school calendar? Other? Teachers?
7. Do Support Teachers work a regular schedule?
How many hours do they average a day? week? (Are individual breakdowns available?)
8. Appointment of Support Teachers (also: other teachers).
 - a. How does a person apply for position?
 - b. Who interviews?
 - c. Who participates in decision to hire?
9. Where do Support Teachers work?
10. Assignment and Supervision of Support Teachers (also: other teachers)
 - a. Who assigns them to a particular location and student(s)?
 - b. To whom do they directly report?
 - c. Are they evaluated? By whom?
 - d. Do Support Teachers coordinate instruction with regular classroom teachers? (How closely?)

C-2 EVD
3/22/76 SR

- e. Do Support Teachers prepare lesson plans (if so, reviewable by whom)?
- f. Are Support Teachers' hours reduced or increased as the work load varies?
- g. Can Support Teachers reject assignments at will?
- h. Who recommends non-retention of Support Teachers?
11. How are Support Teacher salaries determined, and how are they paid?
12. Are Support Teachers paid if they are absent?
13. Is there a substitute appointed for an absent Support Teacher?
14. Do Support Teachers receive any benefits beyond salary?
 - a. Sick days?
 - b. Personal/Professional days?
 - c. Medical Insurance?
 - d. Other?
15. Are Support Teachers offered or expected to advise extra-curricular activities?
16. Do Support Teachers ever substitute for absent teachers? (If so, is there a preference for this over substitute personnel?)
17. Do Support Teachers monitor hall duty/bus duty/study hall/homeroom?
18. When was F.L.E.A. recognized for negotiating purposes?
19. When was the first written contract executed?
20. Has the unit recognition language change in any way since the first contract?
21. How many contracts have been entered into? For what years?
22. When was F.L.E.A. made proposals for Support Teachers during negotiations? (Be as specific as possible)

ATTACHMENT "B"

SUPPORT TEACHERS FAIR LAWN, N.J.

1774-1777

Warren Point School

E. Mullin Primary Unit

Warren Point School Annex

C. Kay Primary Unit

E. Zelch Primary Unit

M. Mendelsen Kindergarden

Forrest School

A. Albalah Multi-age Unit

Westmoreland School

B. Rudnik teach Math. Gr. 4,5,6

Radburn School

K. Sapherstein Primary Unit

M. Salkowitz Primary Unit

D. Adolf Unit III (Math. & Reading, Grades 5 & 6)

B. Schwartzberg Unit III " " " " "

M. Blumenthal Unit III " " " " "

R. Feinstein Unit III " " " " "

Milnes School

V. Felice Gr. 1

P. Gruber Gr. 1

E. Friedman Gr. 2 & 3

F. Shaw Gr. 2 & 3

C. Mitch Kindergarden

Rose Schein assignment unknown

Lyncrest School

R. Stecker Gr. 6

Edison School

E. Spielman Primary Unit

H. Mann Primary Unit

PE-5-20.

5-17-74

JD

14-01 Plymouth Drive

Fair Lawn, New Jersey 07410

May 29, 1975

Mr. John J. Farah, V.P., FLEA

Radburn School

Fair Lawn, New Jersey

Dear Mr. Farah,

This letter is in reference to the attached letter I received from you in today's interschool communications.

I am not a member of F.L.E.A. and in no way does F.L.E.A. represent me. I do not want my name used in connection with your actions. I want to state now that I disassociate myself from any actions of F.L.E.A.

I also wish to inform you that I had no previous knowledge that F.L.E.A. was to file an Unfair Labor Practice Charge with the Public Employee Relations Commission (prior to receiving this enclosed mailing) or that my name was being used.

I urgently request that you correct any papers that have already been submitted and any that you intend to submit in the future with my name. I wish my name removed from all papers concerning your actions.

Respectfully yours,

Rowena Stecker
Rowena Stecker

Copies sent to:
Fair Lawn Board of Education
Commissioner of Education
Public Employee Relations Comm.