

D.U.P. NO. 93-39

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

In the Matter of

HARDYSTON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-93-226

HARDYSTON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Hardyston Township Education Association against the Hardyston Township Board of Education. The charge alleges that the Board violated 5.4(a)(1) and (5) of the Act when its superintendent refused to submit a grievance concerning a classroom key policy to the Board and singularly determined what constitutes a grievance and what grievances the Association can pursue.

The Director finds that the Board, in contending that the grievance involves a managerial prerogative and does not fall within the definition of grievance set forth in the agreement, did not disregard or repudiate the terms of the agreement. Rather, it simply interprets them differently from the Association. Under these circumstances, the Commission will not exercise its unfair practice jurisdiction.

Moreover, the Director finds that the grievance was presented to the Superintendent and thus the Board satisfied any underlying obligation it may have under the Act, outside its grievance procedure, to allow for the presentation of grievances.

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Appearances:

For the Respondent,  
Morris, Downing & Sherred, attorneys  
(M. Richard Valenti, of counsel)

For the Charging Party,  
New Jersey Education Association  
(Michael Mulkeen, Field Representative)

REFUSAL TO ISSUE COMPLAINT

On December 29, 1992, the Hardyston Township Education Association filed an unfair practice charge with the New Jersey Public Employment Relations Commission against the Hardyston Township Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically, subsections 5.4(a)(1) and (5)<sup>1/</sup>

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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."

when its superintendent refused to submit a grievance concerning a classroom key policy to the Board and singularly determined what constitutes a grievance and what grievances the Association can pursue. The Association claims that the Board's action is a repudiation of the parties' collective negotiations agreement.

The Board denies that it violated the Act, claiming that the key grievance involves a managerial prerogative and thus is not grievable within the terms of the agreement. It further points out that the superintendent did entertain the grievance and, in fact, responded to it in writing.

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Article III of the Agreement, entitled "Grievance Procedure", in pertinent part provides:

A. Definitions

1. A "grievance" is a claim by a teacher or the association based upon an event or the interpretation, application, or violation of the Agreement, policies, or administrative decisions affecting terms and conditions of employment.

C. Procedure

3. Level One

An employee with a grievance shall first discuss it with the Superintendent, either directly or through the Association's designated Representative, with the objective of resolving the matter informally within twenty school days.

4. Level Two

(a) If the grieved [sic] person is not satisfied with the disposition of his/her

grievance at Level One, or if no decision has been rendered within (5) five school days after presentation of the grievance, he or she may file the grievance in writing with the Superintendent. The Association shall be notified of all decisions when rendered.

5. Level Three

(a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after the grievance was delivered to the Superintendent, he may within five (5) school days after a decision by the Superintendent or fifteen (15) school days after the grievance was delivered to the Superintendent, whichever is sooner, request in writing that the Chairperson of the Grievance Committee submit his grievance to the Grievance Committee of the Board. If the Committee determines that the grievance is meritorious, it may submit the grievance to the Grievance Committee of the Board within fifteen (15) school days after receipt of a request by the aggrieved person.

(b) Within ten (10) school days after receipt of written notice of the grievance, the Grievance Committee of the Board shall meet with the Committee to attempt resolution of the grievance.

(c) Within ten (10) school days if no solution is rendered under the provisions of item "B", the Committee will meet with the entire Board.

(d) If no solution is reached under "C" the parties expressly agree that the resolution of the conflict shall be at the sole discretion of the Board.

In an effort to better supervise and control the school district's property, the Board implemented a policy requiring that classroom keys be placed in the teacher's mailbox at the end of the

day. The teacher then picks up the key in the morning. The system was employed by the Board to enable it to keep track of the keys for safety and security reasons.

In September 1992, the Association filed a grievance over the new key system. Pursuant to the grievance procedure, Superintendent Anthony Norod met with the grievance committee of the Association over the grievance. On September 29, 1992, Norod denied the grievance in writing, finding that the matter was a managerial prerogative. The Association then sought to have Norod submit the grievance to the personnel committee of the Board. By letter to the Association dated November 19, 1992, Norod refused. He reiterated that the matter was a managerial prerogative and not grievable within the terms of the agreement.

#### ANALYSIS

Where an employer does not repudiate or disregard the terms of a contract, but rather reasonably relies upon contract language to defend its action, the Commission will not find an unfair practice. Tp. of Barnegat, D.U.P. No. 91-19, 17 NJPER 172 (¶22071 1992); State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).


Here, the Association claims the Board repudiated the agreement by refusing to place its grievance before the Board, pursuant to Level Three of the grievance procedure. However, the Board contends that the grievance involves a managerial prerogative and thus does not fall within the definition of grievance set forth

in the agreement. That is, the Board is arguing that the grievance is not contractually grievable. As such, the Board did not repudiate or disregard the terms of the agreement; rather, it simply interprets them differently than the Association. Under these circumstances, the Commission will not exercise its unfair practice jurisdiction. Barnegat; Human Services; Rutgers University, P.E.R.C. No. 89-38, 14 NJPER 655 (¶19276 1988).

Moreover, the grievance was presented to the superintendent. He met with the Association's Grievance Committee, considered the grievance and responded to it in writing. Thus, the Board satisfied any underlying obligation it may have had under the Act, outside its grievance procedure, to allow for the presentation of grievances. Op. of W. Windsor v. P.E.R.C., 78 N.J. 98 (1978); .

Therefore, I find that the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge.<sup>2/</sup>

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: May 5, 1993  
Trenton, New Jersey