

P.E.R.C. NO. 92-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BRICK TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-91-67

EDWARD F. O'TOOLE, JR.,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission vacates D.U.P. 92-4 and remands to the Director of Unfair Practices for further processing an unfair practice charge filed by Edward F. O'Toole, Jr. against the Brick Township Board of Education. If the Director is not inclined to issue a Complaint, he should issue a 7-day letter apprising O'Toole of any information he intends to rely on in dismissing the charge and giving O'Toole an opportunity to amend his charge to include new factual allegations that might constitute an unfair practice or to submit a legal position about why he believes the existing allegations, if true, might constitute an unfair practice.

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Appearances:

For the Respondent, Barbara Wylie, Assistant Transportation Supervisor

For the Charging Party, Edward F. O'Toole, Jr., pro se

DECISION AND ORDER

On May 1, 1991, Edward F. O'Toole Jr. filed an unfair practice charge against the Brick 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 section 5.7 and subsection 5.4(a)(1),^{1/} when it barred a non-union employee from pursuing a grievance by failing to respond to his grievance in accordance with the grievance procedure in the

^{1/} N.J.S.A. 5.7 provides that "[a]ny action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this act." N.J.S.A. 5.4(a)(1) prohibits public employers, their representatives or their agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

collective negotiations agreement between the Board and Transport Workers Union of America, AFL-CIO, Local 225, Branch 4.^{2/} That grievance procedure provides that a grievant, with or without a union committee representative, may file a grievance at level one and that the union, after receiving a reply at level one, may submit the grievance in writing to the superintendent at level two.

On May 23, 1991, the Director of Unfair Practices informed O'Toole that, pursuant to N.J.A.C. 19:14-2 et seq., he was not inclined to issue a Complaint. The Director stated that under normal circumstances, an individual has no standing to claim that a contractual term and condition of employment has been breached. He also stated that O'Toole had not alleged any facts to show that he had been treated differently because he was not a member of Local 225. The Director informed O'Toole that he could submit amended factual allegations or a statement of legal position within seven days of receiving the Director's letter.

On June 5, 1991, O'Toole responded. He argued that he had standing to pursue his charge and that the failure to respond to his grievance violated the contract and the Act. He further argued that action beyond level one of the grievance procedure is reserved to the union and predicated on the supervisor's reply to level one. He claimed that a non-union grievant who does not receive a reply from the supervisor is without recourse within the contract and must

^{2/} O'Toole and the Director refer to Local 224. Since the contract submitted by O'Toole is between the Board and Local 225, we assume that Local 225 is the majority representative.

therefore invoke our unfair practice jurisdiction. Finally, he argued that the grievance procedure is clear and that an inference of a bad faith repudiation arises from a refusal to honor it.

On July 19, 1991, the Director refused to issue a Complaint. D.U.P. No. 92-4, 17 NJPER 391(¶22186 1991). He found that even if the Board had not provided O'Toole with a written response to his grievance at the first step, the grievance continued to be processed and moved through the grievance procedure to arbitration. Therefore, he concluded that the Board did not refuse to process the grievance and O'Toole had not been denied access to the grievance procedure. The Director relied on a letter to a Commission staff agent from Barbara Wylie, the Board's Assistant Transportation Coordinator, which stated that the grievance in question was denied at her level and automatically moved to the second level by the union chairperson. It also stated that the grievance was now in the hands of an arbitrator.^{3/} The Director also found that O'Toole had not alleged any facts to show that he was treated differently because he was not a member of Local 225.

On August 9, 1991, O'Toole appealed. He claims that the Director, without invoking the procedures available to him under N.J.A.C. 19:14-1.6, relied on Wylie's "unverified letter." He argues that the Board's failure to respond to his grievance violated

^{3/} There is no indication that a copy of Wylie's letter was sent to O'Toole at the time.

N.J.S.A. 34:13A-5.3's requirement that negotiated grievance procedures "shall be utilized for any dispute covered by the terms of such agreement."

Under all the circumstances, we remand this case to the Director for further processing.^{4/} The Director relied on Wylie's letter in dismissing the charge. It appears that O'Toole was not provided with a copy of that letter before the charge was dismissed and that he objects to the Director's reliance on it. It also appears that O'Toole may not have known the facts that the letter alleges -- that his grievance was denied at Wylie's level, was moved to the second level of the grievance procedure, and is now in arbitration.

If the Director is not inclined to issue a Complaint, he should issue another seven-day letter apprising O'Toole of any information he intends to rely on in dismissing the charge and giving O'Toole an opportunity to amend his charge to include new factual allegations that might constitute an unfair practice or to submit a legal position about why he believes the existing allegations, if true, might constitute an unfair practice. The Director may also schedule a conference for the purposes of clarifying the issues and exploring the possibility of settlement.

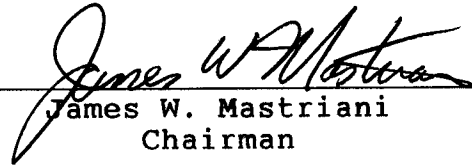
N.J.A.C. 19:14-1.6(c).

^{4/} We deny O'Toole's request for oral argument.

ORDER

D.U.P. 92-4 is vacated. This case is remanded to the Director of Unfair Practices for further processing consistent with this opinion.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Regan abstained from consideration.

DATED: November 25, 1991
Trenton, New Jersey
ISSUED: November 26, 1991