

P.E.R.C. NO. 81-93

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-15

SAYREVILLE EDUCATION SECRETARIAL
ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission reverses the refusal of the Director of Representation to issue a complaint in this case. The Commission determines that absent a hearing it cannot be determined with certainty whether the elimination of and reestablishment of two secretarial positions by the Board of Education was a matter of managerial prerogative or was a reduction in work year, a matter which requires negotiations with the Association. The Commission directs that a Complaint be issued.

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Appearances:

For the Respondent, Casper P. Boehm, Jr., Esq.

For the Charging Party, Rothbard, Harris &
Oxford, Esqs. (Nancy Iris Oxford, of Counsel)

DECISION AND ORDER

This case is before the Commission as an appeal by the Sayreville Educational Secretarial Association (the "Association") from a decision of the Director of Unfair Practices, D.U.P. No. 81-9, 6 NJPER _____ (¶ _____ 1980) in which he refused to issue a complaint on an unfair practice charge brought by the Association against the Sayreville Board of Education (the "Board"). See N.J.A.C. 19:14-2.3. The charge alleges that following the retirement of one secretary and the resignation of another, the Board, unilaterally and without negotiations, abolished both positions which carried 12-month work years and reestablished them as 10-month positions. The Association contends that such action violated N.J.S.A. 34:13A-5.4(a)(1) and (5). ^{1/}

^{1/} 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
(Continued)

In so ruling, the Director relied upon a recent decision of the Appellate Division which affirmed our determination that the action of a Board of Education in abolishing the curricular position of instrumental music instructor and the extra-curricular position of band director followed by the establishment of a new position encompassing the duties of the two abolished posts, was non-negotiable and non-arbitrable except as to the compensation to be paid the holder of the new position. Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980).

In its appeal, the Association contends that the facts, as alleged, constitute an unfair practice as was found in Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Principal's Association, 164 N.J. Super. 98 (App. Div. 1978). There it was held that the Piscataway Board committed an unfair practice when it unilaterally and without negotiations reduced the work year of certain principals from 12 months to 10 months.

A Statement in Opposition to the Association's appeal has been filed by the Board herein which urges us to affirm the Director's conclusion that the facts as alleged are governed by the Ramapo-Indian Hills case and that no unfair practice has been committed herein.

The standard for the issuance of an unfair practice complaint is set forth at N.J.A.C. 19:14-2.1(a):

After a charge has been filed and processed, if it appears to the director of

1/ (Continued) 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."

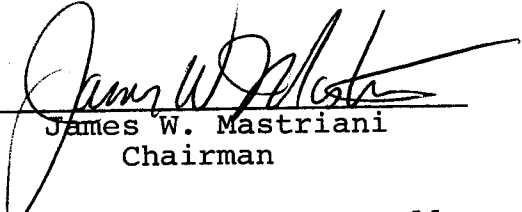
unfair practices that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the director of unfair practices shall issue and cause to be served on all parties a formal complaint...

Given the above standard, we are unable to say with certainty prior to any hearing to determine the facts, which, if either, of the two Appellate Division decisions cited by the parties are controlling. We believe that the Director should have given the Charging Party an opportunity to litigate its case and we shall direct that a Complaint and Notice of Hearing be issued.

ORDER

The decision of the Director of Unfair Practices in refusing to issue a Complaint in this matter is reversed and the Director is directed to issue a Complaint with respect to the violations of N.J.S.A. 34:13A-5.4(a)(1) and (5) alleged in the charge.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett and Parcells voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
January 20, 1981
ISSUED: January 21, 1981