

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAKESWOOD BOARD OF EDUCATION,
Respondent,

-and-

LAKESWOOD EDUCATION ASSOCIATION,
Charging Party.

Docket Nos. CO-77-165
and CO-77-267

SYNOPSIS

The Chairman of the Commission, as the Commission's named designee, denies a motion for summary judgment filed by the Lakewood Board of Education with reference to two charges filed against the Board by the Lakewood Education Association.

The charges allege that two individuals were denied reappointment as coaches because they had successfully prosecuted several grievances against the Board. In its motion, the Board contends that the Commission lacks jurisdiction of this matter, claiming that jurisdiction resides with the Commissioner of Education. Additionally, it asserts that the action of the Board could not constitute an unfair practice and that, in any event, the parties' agreement requires that aggrieved teachers must submit any disputes to arbitration.

In denying the motion, the Chairman concludes that the charges, if proven, clearly constitute unfair practices over which the Commission has jurisdiction, that a hearing is necessary to adduce the facts, and that the fact that a matter may be a grievance as defined in a contract does not mean that the same matter could not be a violation of the Act over which the Commission has jurisdiction.

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Charging Party.

Appearances:

For the Respondent, Rothstein, Mandell & Strohm, Esqs.
(Mr. Peter R. Strohm, of Counsel)

For the Charging Party, Starkey, White & Kelly, Esqs.
(Mr. James M. Blaney, of Counsel)

ORDER ON MOTION

On December 21, 1976 (Docket No. CO-77-165) and on March 11, 1977 (Docket No. CO-77-267) the Lakewood Education Association (the "Association") filed separate unfair practice charges with the Public Employment Relations Commission alleging that the Lakewood Board of Education (the "Board") had engaged in conduct violative of subsections (a)(1), (3) and (4) of the unfair practice provisions of the New Jersey Employer-Employee Relations Act (the "Act"), as amended (N.J.S.A. 34:13A-5.4(a)(1), (3) and (4)).^{1/}

^{1/} Those subsections prohibit 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

Essentially, the charges allege that two teachers represented by the Association who had served as athletic coaches were not reappointed to these coaching positions because those teachers each had filed two separate grievances against the Board.

On May 3, 1977 the matters were ordered consolidated by the Director of Unfair Practice Proceedings and on that same date, it appearing to the Director that the allegations of the charges, if true, might constitute unfair practices, a Complaint and Notice of Hearing in the consolidated matters was issued.

On June 14, 1977 the Respondent filed a Notice of Motion and a supporting brief with the Commission seeking a dismissal of the complaints, and it is that motion which is the subject of this decision. The Commission reviewed the motion papers at its meeting of June 21, 1977 and concluded that the motion was one in the nature of a motion for summary judgment. Thereafter, pursuant to N.J.S.A. 34:13A-6(f) and N.J.A.C. 19:14-4.1, the Commission delgated to the undersigned the authority to rule on this motion.

The undersigned has reviewed the pertinent documents including the unfair practice charges, the answers to the complaint, the Board's notice of motion and the supporting brief filed by the Board.

The Board asserts that the instant complaints should be dismissed for three reasons. First, it is claimed that the Commission, as a matter of law, lacks jurisdiction of these matters. It argues that this matter falls within the jurisdiction of the

Commissioner of Education. Second, it is argued that even if the Commission does have jurisdiction as a matter of law, the failure to reassign a coach could not constitute an unfair practice because a board has an absolute right to assign or not to assign coaches. Third, it is contended that the agreement between the parties requires teachers to submit any grievances to binding arbitration.

For the reasons set forth below, the Board's motion is denied. First, with respect to jurisdiction, the gravamen of the charge is that the two teachers were not reappointed as coaches because they successfully prosecuted several grievances before the Board. If these charges are true, then the Board may have violated the Act. That is not to say that the Commissioner of Education may not have jurisdiction over aspects of this matter as well. However, the power of the Commission to prevent and remedy unfair practices such as alleged herein is undeniable. See N.J.S.A. 34:13A-5.4(c).

Second, the Board claims that it has an absolute right to assign or not to assign teachers as coaches and that its action in not reassigning the two individuals could not constitute a violation of the Act. That claim is rejected. We note at the outset that the claimed right of the Board to assign teachers as coaches is not disputed in this proceeding. However, such assignments clearly affect or relate to terms and conditions of employment, at least to the extent of additional compensation, and the Act precludes the Board from making such assignments for reasons

proscribed by the Act e.g. interference with employees in the exercise of their guaranteed rights. It cannot be determined at this time, prior to a hearing, whether the Association will succeed in proving that the Board's action did constitute a violation of the Act. However, the Association cannot be denied the opportunity to prove its allegations which, as stated, would constitute violations of the Act over which the Commission has jurisdiction.

Third, the Board contends that the parties' contract requires that grievances be submitted to binding arbitration. It is noted that, in its charges, the Association states that certain sections of the agreement were not followed.

It is observed that the Commission has adopted a general policy of deferring unfair practice charges to the parties' negotiated grievance/binding arbitration mechanism in appropriate circumstances and under limited conditions. Typically, the Commission has deferred when there has been an alleged violation of the duty to negotiate (N.J.S.A. 34:13A-5.4(a)(5)) rather than of subsections (a)(3) and (a)(4). See In re East Windsor Board of Education, E.D. No. 76-6, 1 NJPER 59 (1975) and In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975). During the pendency of arbitration proceedings, the Commission retains jurisdiction over the pending unfair practice charges. However, the fact that a matter may constitute a grievance as defined in a collectively negotiated agreement does not mean that that same matter might not constitute a violation of the Act. The jurisdiction of the Commis-

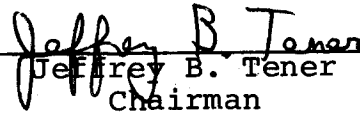
sion is not limited to those situations in which the dispute is not covered by the terms of an agreement but rather extends to all alleged unfair practices.

For the reasons set forth above, and recognizing that there are factual matters in dispute relating to the reasons for the Board's action, it is concluded that this matter cannot be disposed of on the basis of a motion for summary judgment.

ORDER

Based upon the above discussion, it is hereby ordered that the Lakewood Board of Education's motion for summary judgment is hereby denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
June 23, 1977