

P.E.R.C. NO. 92-130

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 sustains the Director of Unfair Practices' refusal to issue a complaint based on an unfair practice charge filed by Edward F. O'Toole, Jr. against the Brick Township Board of Education. The charge alleged that the City violated the New Jersey Employer-Employee Relations Act 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 collective negotiations agreement between the Board and Transport Workers Union of America, AFL-CIO, Local 225, Branch 4. The Commission agrees with the Director that the Charging Party's allegations, even if true, would not rise to the level of an unfair practice.

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.

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. 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 March 20, 1992, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 92-12, 18 NJPER 210 (¶23093 1992).^{2/} The essence of O'Toole's charge is that the Board violated the Act when it failed to respond to his grievance in writing. That grievance contested the Board's alleged failure to respond to an earlier grievance which was apparently settled. The Director found that the Board's alleged failure to respond to the second grievance is moot and that there is nothing to be gained in litigating this failure to provide a written response. On April 1, 1992, O'Toole appealed the Director's decision.

An employer's failure to follow intermediate steps of a self-executing grievance procedure in an individual case generally does not amount to a contract repudiation. See, e.g., New Jersey Transit Bus Operations Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986). But a blanket refusal to comply with a grievance

^{2/} On July 19, 1991, the Director also refused to issue a Complaint. D.U.P. No. 92-04, 17 NJPER 391 (¶22186 1991). We remanded the matter to give O'Toole an opportunity to reply to a letter the Director relied on. P.E.R.C. No. 92-59, 18 NJPER 42 (¶23015 1991).

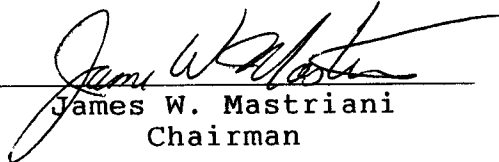
procedure may violate the Act. See, e.g., New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 89-29, 14 NJPER 638 (¶19267 1988).

Here, the charging party's allegations, even if true, would not rise to the level of an unfair practice. There are insufficient facts alleged to support a finding that the Board repudiated the contractual grievance procedure. Accordingly, we deny the charging party's appeal.

ORDER

The refusal to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: June 25, 1992
Trenton, New Jersey
ISSUED: June 26, 1992