

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SHREWSBURY BOROUGH BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-81-81-75

SHREWSBURY BOROUGH TEACHERS
ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission finds that the Shrewsbury Borough Board of Education violated the New Jersey Employer-Employee Relations Act when it failed to comply with the request of the Shrewsbury Borough Teachers Association for information pertaining to a grievance processed by a member of the Association's collective bargaining unit individually and without the aid of an Association representative. Such action was found by the Commission to be violative of N.J.S.A. 34:13A-5.4(a)(1) and (5). In reaching its decision, the Commission finds that the question as to whether an individual employee has a right to process a grievance on his or own, without the intervention of the majority representative is not at issue herein. Rather, the dispute relates to the right of the majority representative to information relating to the processing of grievances which it requires so that it may adequately represent all members of the collective negotiations unit. By way of remedy, the Commission orders the Shrewsbury Board to cease and desist from refusing to disclose pertinent information to the Association which will enable the Association to adequately represent the employees in its negotiating unit concerning possible violations in adherence to the negotiations agreement and to affirmatively disclose to the Association pertinent information requested concerning the grievance involved in this case.

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Appearances:

For the Respondent, Atkinson & DeBartolo, Esqs.
(Bunce D. Atkinson, Esq.)

For the Charging Party, Greenberg & Mellk, Esqs.
(James F. Schwerin, Esq.)

DECISION AND ORDER

On September 22, 1980, the Shrewsbury Borough Teachers Association (the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission seeking a determination as to whether the Shrewsbury Board of Education (the "Board") had committed an unfair practice pursuant to N.J.S.A. 34:13A-5.4(a)(1) and (5),^{1/} by failing to provide the Association with information relating to a grievance processed by a member of the Association's collective bargaining unit individually and without the aid of an Association representative. It appearing that the allegations of the Unfair Practice Charge, if true,

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 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.

might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 17, 1980. The Association's representative filed a Motion for Summary Judgment and a brief in support of that motion on February 4, 1981 pursuant to N.J.A.C. 19:14-4.8. A Cross-Motion for Summary Judgment, and supporting brief was filed by the Board's representative on February 18, 1981 and the Association then filed a reply brief on March 3, 1981. It appears to the Commission, from all of the documents filed, that there exists no genuine issue of material fact and that this dispute can be decided summarily.

The facts in this case concern a dispute between the Board and the Association which arose when the Grievance Committee of the Board met with a member of the negotiating unit over an involuntary transfer from one grade to another. Article II of the collective agreement between the parties governs the grievance procedure to be utilized and that procedure allows in part:

...the right of any teacher having a grievance to discuss the matter informally with an appropriate member of the administration, and having the grievance adjusted without intervention of the Association, provided adjustment is not inconsistent with the terms of this agreement. The teachers, administrators and/or Board may have representatives of their choice in attendance at the Superintendent's level and at all subsequent levels of the grievance procedure.

This grievance procedure, providing there has been no prior settlement of the matter in dispute, is to culminate with advisory

arbitration. The dispute was settled by the Board and the individual teacher and subsequent to this settlement the Association requested all correspondence and Board of Education minutes relating to the grievance. This request was denied by the Board due to the fact that the grievant was not a member of the NJEA. Additionally, in the Board's brief a great weight has been given to the fact that the individual has not consented to the disclosure. The Board asserts that it is under no obligation to provide the Association with information concerning the adjustment of the grievance and when the Board failed to disclose the requested information, the Association filed an unfair practice charge.

Although a large amount of time has been devoted in the parties' briefs to whether or not an individual has the right to process a grievance on his own with cases cited such as Red Bank Regional Education Association v. Red Bank Regional High School Board of Education, 78 N.J. 122 (1978); Lullo v. International Association of Firefighters, 55 N.J. 409 (1970) and New Jersey Turnpike Employees Union v. New Jersey Turnpike Authority, 123 N.J. Super. 461 (App. Div. 1973), the Commission does not find this to be the central issue in this case. The question to be considered is not whether an employee has the right to individually process a grievance, but rather whether the Association generally has the right of access to information pertaining to grievances arising under the terms of an agreement in which it is the exclusive representative.

It has been well established by the New Jersey Supreme Court that federal law and adjudications under the LMRA can serve

as a guide to interpreting the New Jersey Law, Lullo v. Int'l Ass'n of Firefighters, 55 N.J. 409 (1970) and Galloway Twp. Bd. of Ed. v. Galloway Twp. Ass'n of Educational Secretaries, 78 N.J. 1 (1978), and the Commission follows this principle in the present consideration. In NLRB v. Acme, 385 U.S. 432, 87 S. Ct. 565 (1967) the Supreme Court declared that the majority representative has a right to relevant information in the possession of the employer. Quoting from NLRB v. Truitt Mfg. Co., 351 U.S. 149, the Court stated that, "There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties." Acme, page 435-436. The Court, in affirming the Board's original decision requiring the employer to supply the requested information found that the Board was "only acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." Acme at 437. The Court was more concerned with the potential relevance of the information to the union in this matter, as is the Commission presently.

The Association in its brief has offered several reasons for its interest in the information pertaining to the grievance and each reason is at least potentially relevant to its statutory duties and responsibilities as a majority representative.

...a Union may have interests necessitating the filing of a grievance that differ from those of a particular individual employee in the same set of facts...while the employee in question may be only interested in his own teaching assignment, the Association has to consider other matters such as whether the Board of Education has abided by contractual provisions

relating to how complaints about involuntary transfers will be handled. Page 4 and 5 of Association's Reply Brief.

Although the individual grievant in this matter has been satisfied, this in no way automatically terminates the duties and responsibilities of the Association in keeping current on how the contract is being interpreted. This is essential not only to their obligation to protect the grievant himself but also all other employees within the negotiating unit who arguably could encounter the same difficulty.

The Commission recognizes that an employer's obligation to release information requested by a majority representative is not absolute and that the duty to disclose "turns upon the circumstances of the particular case." NLRB v. Truitt Mfg. Co., 351 U.S. 149, 153. The cases found in both parties' briefs shed light on what measures have been used in ascertaining the decision as to whether disclosure of information is appropriate. These cases speak in particular about the content of the information. As has been previously stated the issue in this case involves the disclosure of information to the Association concerning the adjustment of a grievance and not the content of the requested information.

The only reasons offered by the Board for failing to disclose the requested information are the individual's right to file a grievance on his own, and the individual's failure to give his consent to such disclosure. Whether an employee has a right to file a grievance individually has no bearing on the union's right to information which would aid it in properly performing its duties.

Additionally, it has already been decided in Red Bank Reg. Ed. Assn. v. Red Bank Reg. High School, 78 N.J. 122 (1978) that an employer cannot condition its acceptance of an organizational grievance on the employee's consent, Red Bank at 142, and it would seem to follow that the Board cannot rely on the employee's lack of consent in the present case for its refusal to respond to the request of the Association.

There has been no indication by the Board that employee confidentiality is a concern here, especially since the Association knows who the individual is and the nature of his grievance. There is also no likelihood of any danger to the employee if the information was disclosed,^{2/} and further the Board has failed to offer any alternatives that would satisfy the Association's need for obtaining the information.

The Commission takes note that the nature of the individual's grievance involved an involuntary transfer which is a non-negotiable subject matter relating to a managerial prerogative. Since the grievance procedure, as found in the agreement between the parties, provides for advisory arbitration, the decision reached by the Court in Bd. of Ed of the Township of Bernards v. Bernards Township Ed. Assn, 79 N.J. 311 (1979) is significant. In Bernards the court stated that "...a provision in a negotiated grievance procedure calling for advisory arbitration - even if it encompasses disputes concerning the applicability of managerial prerogatives - is itself a term and condition of employment." Bernards at 326. Matters concerning the interpretation

^{2/} To the extent that the information could be considered sensitive or harmful to the employee, the Association may have an obligation to treat it as confidential also, pursuant to its responsibility to represent the interests of the employee.

and the resolution of grievances under that agreement are of principal import to the majority representative regardless of whether such matters arise when **negotiating** an agreement or during its term. The majority representative has a right to such information so that it may adequately represent all members of the unit.^{3/}

In Red Bank, supra, the court was cognizant of the sensitive role that the majority representative can play in the grievance process.

The combination of N.J.S.A. 34:13A-5.3 and 5.4(a)(5) would seem to manifest a legislative intention to entrust primary responsibility for the presentation of employee grievances to a majority representative (where one exists) rather than to the aggrieved individual himself. We can only infer from this amendment to the Act that N.J.S.A. 34:13A-5.3 must be construed to safeguard the right of the individual unit employees to have their grievances presented through their majority representative. Red Bank 139-140.

The wording found in the court's decision establishes the prominent role to be played by a majority representative in a grievance process. This, of course, is not to say that an individual grievant cannot process his own grievance, however, a majority representative

^{3/} 34:13A-5.3, in part, reads: "...Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this Act shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiations with the majority representative; and (c) a minority organization shall not present or process grievances...."

should certainly be entitled to information which would enable it to ascertain whether the procedure has been properly administered and to be advised of the details of the grievance not only for the protection of the individual grievant, but for all other unit employees as well.

For these reasons stated, the Commission finds that the Board has violated N.J.S.A. 34:13A-5.4(a)(1) and (5).

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Respondent Shrewsbury Board of Education:

A. Cease and desist from refusing to disclose pertinent information to the Association which will enable the Association to adequately represent the employees in its bargaining unit concerning possible violations in adherence to the negotiated agreement.

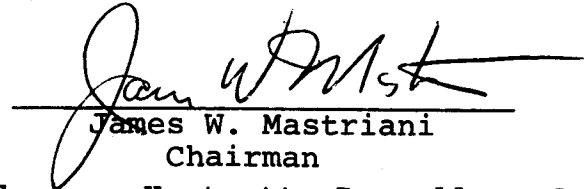
B. Take the following affirmative action:

1. Disclose to the Association pertinent information it requests concerning the grievance in this matter.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of said notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Board to insure that such notices are not altered, defaced or covered by other material.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett, Parcels and Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained.

TED: Trenton, New Jersey
April 16, 1981
SSUED: April 20, 1981

"APPENDIX A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL disclose pertinent information to the Association which will enable the Association to adequately represent the employees in its bargaining unit concerning possible violations in adherence to the negotiated agreement.

WE WILL disclose to the Association pertinent information it requests concerning the grievance in this matter.

SHREWSBURY BOROUGH BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.