P.E.R.C. NO. 86-138

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROSELLE BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-85-171

ROSELLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the Director of Unfair Practices' refusal to issue a Complaint based on an unfair practice charge filed by the Roselle Education Association against the Roselle Board of Education. The charge alleged the Board violated the New Jersey Employer-Employee Relations Act when it refused to comply with a provision of the parties' collective negotiations agreement. The Commission holds that the dispute pertains solely to the interpretation of a new provision of the parties' contract and that such disputes should be resolved through the parties' agreed upon grievance procedures and not through unfair practice proceedings.

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Appearances:

For the Respondent, Green & Dzwilewski, Esqs.
(Allan P. Dzwilewski, of Counsel)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs.
(Nancy Iris Oxfeld, of Counsel)

DECISON AND ORDER

On January 16, 1985, the Roselle Education Association ("Association") filed an unfair practice charge against the Roselle Board of Education ("Board"). The charge alleged the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),[1/] when it

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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; and (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."

refused to comply with a provision of the parties' collective negotiations agreement. The charge, in its entirety, states:

> The Roselle Education Association and the Board of Education signed a Memorandum of Agreement on November 26, 1984 as a result of negotiations for a collective negotiations agreement for the period from July 1, 1984 through June 30, 1986 which agreement incorporated items previously agreed to in initial rounds of bargaining. The Board has now refused to comply with an amendment to Article x, "Employment Assignment" saying the language does not represent their intent, although the language is the language they agreed to.

On June 30, 1985, the Board filed its Statement of Position. It contends that the charge pertains solely to a dispute concerning the interpretation of a collective negotiations agreement and does not rise to the level of an unfair practice. It relies on State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

On August 20, 1985, the Director of Unfair Practices advised the parties that it appeared that the Commission's complaint issuance standards had not been met because the charge (1) constitutes an attempt on the part of the Association to restrict the Board in the exercise of its inherent managerial prerogative to determine the means by which it will maintain the safety and well being of the student body during the lunch period and (2) the Board's actions are in compliance with the Agreement. Accordingly, he advised that in the absence of a factual basis to support allegations of an unfair practice, the Director would decline to issue a complaint.

On September 12 and 25, 1985, the Association filed its response with supporting certification. It contends that it was not contesting the Board's managerial right to institute cafeteria duty, but only the procedural question of which qualified teachers would be chosen to supervise lunchrooms. With respect to the contract violation allegation, the Association reiterated:

> the Association has filed this charge against the Board of Education because [it] has stated that it agrees with the Association as to the meaning of the language in the contract, but the Board...has stated that regardless it is their intention not to comply with their contractual language.

On October 31, 1985, the Board responded that the dispute is "over a specific contractual provision...the Certification clearly confirms that the issue is one of assignment as it relates to the interpretation of a contractual provision."

On February 27, 1986, the Director of Unfair Practices refused to issue a complaint. D.U.P. 86-6, 12 NJPER ___ (¶_____ 1986). He stated, in pertinent part:

> The Association has argued that the Board agrees with the Association interpretation of Article X.E. but is now reneging on that interpretation. Therefore, it is repudiating that interpretation. (This allegation was never part of the charge and no facts are alleged in the charge which support this contention.)
>
> In fact, the language of Article X.E. is capable of both the Board's and the Association's interpretation. The Board cannot be said to have repudiated the contract when it can make a colorable argument in support of its position and yet the Association's interpretation is, on its face, illegal. Where an unfair practice charge merely alleges a good faith dispute over the

> interpretation of contract language, the Commission has upheld the refusal to issue a complaint. In re State of New Jersey (Dept. of Human Services), D.U.P. No. 84-11, 9 NJPER 682 (¶14299 1983), and In re State of New Jersey (Office of Employee Relations), D.U.P. No. 84-12, 10 NJPER 3 (¶14002 1983), consolidated and aff'd, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). This aspect of the dispute concerns contract interpretation. Such matters are best resolved in accordance with the terms of the parties' grievance procedure and not through the unfair practice process.

On April 14, 1986, after receiving an extension, the Association appealed the Director's refusal to issue a complaint. It contends a Complaint should issue because the charge alleges that the Board is refusing to comply with language it agreed to. It alleges the charge is more than merely a dispute over the interpretation of contract language because "the unfair practice charge alleges that the Board of Education agrees with the Roselle Education Association as to the meaning of the contract language at issue, but is refusing to comply with the language."

We agree with the Director that a complaint should not issue in this matter. Regardless of the conclusory semantics employed, it is indisputable that the dispute between the parties pertains to the interpretation of a new provision of the parties' contract: specifically under what circumstances Article X(E) applies. That article provides:

> Any certificated employee required to supervise students during lunch period, shall be paid at a rate of $12.50 for each lunch period or fraction thereof, supervised. Employees with prior experience in lunch period supervision who volunteer will be granted preference in assignment.

The parties have a different interpretation of the reach of this provision. The Association would read it broadly to cover the entire process for deciding lunch period supervisors when the teacher regularly assigned is absent. The Board contends it does not apply when it decides to fill the vacancy with a supplemental instruction teacher; it only applies when it decides to fill the vacancy with a teacher on non-duty time and the Board has pointed to the stipend portion of the provision to support its interpretation. Given this, it is apparent to us that the sole issue in dispute is a contractual one. There is nothing alleged that would support the Association's naked claim that the Board has repudiated the contract or that it has acted in bad faith. Conclusory allegations are not sufficient. Our unfair practice rules contemplate that the Director may decline to issue a complaint and set forth specific provisions for investigating and processing charges to determine whether complaints should issue. N.J.A.C. 19:14-1.6 and 2.3. This charge was fully investigated and the Association's entire claim, after all this time, still rests on its conclusory allegation that the Board "repudiated" the agreement. Such a claim is not sufficient to warrant issuance of a complaint. It is evident that the dispute pertains to a question of contract interpretation. Such disputes should be resolved through the parties' agreed upon grievance procedures and not through our unfair practice jurisdiction. Human Services.

ORDER

The refusal to issue a complaint is affirmed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this deicsion. None opposed. Commissioners Hipp and Reid abstained. Commissioner Horan was not present.

DATED: Trenton, New Jersey
May 21, 1986
ISSUED: May 22, 1986