

D.U.P. NO. 99-20

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

OCEAN COUNTY BOARD OF SOCIAL SERVICES,

Respondent,

-and-

Docket No. CO-99-136

C.W.A., AFL-CIO,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices declines to issue a complaint on an unfair practice charge filed by CWA against the Ocean County Board of Social Services. CWA alleged that the Board violated the Act when it transferred an employee to a title covered by another negotiations unit's agreement, without ensuring that the employee would not lose the benefits of the agreement negotiated by CWA, including a scheduled salary increase. The Director finds that pursuant to the exclusivity doctrine, CWA has no negotiations obligation concerning an employee transferred to a title covered by another negotiated agreement.

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Appearances:

For the Respondent  
Citta, Holzapfel, Zabarsky & Leahey, attorneys  
(Matthew A. Leahey, of counsel)

For the Charging Party  
Gloria Williams, Representative

**REFUSAL TO ISSUE COMPLAINT**

On November 4, 1998, CWA filed an unfair practice charge alleging that the Ocean County Board of Social Services (Board) violated New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically 5.4a(2), (3) and (5)<sup>1/</sup> when

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (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."

it transferred an employee who is a member of CWA to the same title in a negotiations unit not covered by the CWA collective agreement. CWA contends that the Board did not ensure that the employee would suffer no loss in benefits, privilege or salary provided by the CWA agreement, including a scheduled salary increase effective July 1, 1999. CWA contends that the collective agreement covering the title in the negotiations unit into which the employee was transferred has no such scheduled salary increase, and thus the employee will be denied benefits negotiated for her as a CWA unit member.

The Board responds that pursuant to the collective bargaining agreement, the transfer of employees is a management right. The Board further contends that it and the new union which now represents the transferred employee are about to begin negotiations, and that any salary increase resulting from those negotiations could be retroactive to January 1, 1999, presumably placing the employee in a better position than would the CWA's salary increase scheduled for July 1, 1999.

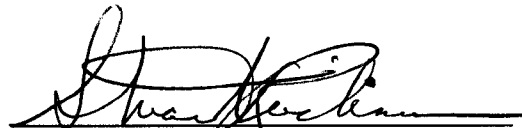
It is clearly established that a public employer has the managerial prerogative to assign employees. See Old Bridge Tp. Bd. of Ed. v. Old Bridge Tp. Ed. Assn., 98 N.J. 523 (1985); Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); Morris Cty. College, P.E.R.C. No. 93-25, 18 NJPER 478 (¶23217 1992). CWA cannot purport to represent the interests of an employee who has been transferred to a position

represented by another negotiations unit -- that would violate the exclusivity doctrine. Old Bridge at 533; New Providence Bd. of Ed., P.E.R.C. No. 93-60, 19 NJPER 112 (¶25164 1994); Wayne Tp. Bd. of Ed., P.E.R.C. No. 80-83, 6 NJPER 30 (¶11015 1980); Trenton Bd. of Ed., P.E.R.C. No. 83-37, 8 NJPER 574 (¶13265 1982), recon. den. P.E.R.C. No. 83-62, 9 NJPER 15 (¶14006 1982), aff'd NJPER Supp.2d 140 (¶123 App. Div. 1984). As the employee is no longer a member of CWA's unit, no negotiations obligation runs to the CWA in this context. Additionally, the charge raises no allegation that the transfer was in any way connected to the member's protected activity. Therefore, since the charge raises no allegation implicating a violation of the Act, I decline to issue a complaint.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Stuart Reichman, Director

DATED: June 23, 1999  
Trenton, New Jersey