

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

In the Matter of

ESSEX COUNTY VOCATIONAL TECHNICAL
BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-81-110

ESSEX COUNTY VOCATIONAL TECHNICAL
TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by a majority representative alleging that the Board of Education permitted a rival union to have access to school communication facilities. The period during which access was granted corresponds to the period during which representation petitions may be filed with the Commission. Under a prior Commission decision, In re Union Cty. Bd. of Ed., P.E.R.C. No. 76-17, an employer may not permit the incumbent representative to have exclusive access to communication facilities during this period and must allow access challenging unions, if the incumbent is also permitted access.

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Appearances:

For the Respondent
Richard M. Cignarella, Assistant County Counsel

For the Charging Party
Rothbard, Harris & Oxfeld, attorneys
(Nancy Iris Oxfeld of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 14, 1980, and amended on December 15, 1980, by the Essex County Vocational Technical Teachers Association (the "Association") alleging that the Essex County Vocational & Technical School Board of Education (the "Board") was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically,

N.J.S.A. 34:13A-5.4(a) (1) and (2). ^{1/} The Charges relate to claims that the Board, during September and October 1980, was permitting a minority representative, the Federation of Teachers, to have "access to school facilities" which are exclusively reserved for the use of the Association.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part, that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission rule provides that the undersigned may decline to issue a complaint. ^{4/}

^{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; (2) Dominating or interfering with the formation, existence or administration of any employee organization."

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof ... "

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

For the reasons stated below, the undersigned determines that the Commission's complaint issuance standard has not been met with respect to the instant charges.

The Association is the exclusive representative of the Board's teaching staff. The Association's current agreement with the Board expires in June 1981. Article IV of the agreement entitles the Association to have access to certain facilities of the Board, including mailboxes and certain communications equipment.

The Association alleges that the Board provided "access to school facilities" to a minority employee representative during September and October 1980. Such a period of time is co-extensive with the contractual "window" or "open" period during which employee representatives may file representation petitions with the Commission seeking to replace the current majority representative. See N.J.A.C. 19:11-2.8(c)(3).

Assuming for the present purposes that the Association has, by virtue of its contract, exclusive privileges with respect to school facilities, such exclusivity is not accorded during an "open" period. In re Union Cty. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976). The employer's responsibilities are clearly set forth in the above decision:

[O]nce a timely representation petition is filed or during an open period when such a petition could be filed, the interests of the individual employees in being able to freely choose their representative will outweigh the need for stability. If the incumbent is permitted the use of the employer's facilities for communication with the employees, the employer will have to make provisions to allow the challenging group access to the facilities.

It would therefore appear, pursuant to the facts alleged herein, that the Board's actions are consistent with its responsibilities. Although the Association claims and stresses in its amended charge that it has not conducted any organizational activity on school premises, such conduct is not a precondition for the employer's grant of access to facilities to minority representatives as outlined in Union County. The Association was permitted access to the employer's facilities for communication with employees; therefore, similar access must be granted to challenging organizations during an "open" period.

Accordingly, the undersigned declines to issue a complaint with respect to the instant Charge.

BY ORDER OF THE DIRECTOR
UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: June 15, 1981
Trenton, New Jersey