

D.U.P. NO. 88-12

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

In the Matter of

UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA, LOCAL 623,

Respondent,

-and-

ATLANTIC CITY CONVENTION CENTER AUTHORITY,

Respondent,

-and-

CITY OF ATLANTIC CITY,

Respondent,

-and-

DOCKET NOS. CO-83-286, CO-83-287,  
CO-83-288, CO-83-289, CO-83-290

ATLANTIC CITY CONVENTION & VISITORS BUREAU,

Respondent,

-and-

ATLANTIC COUNTY IMPROVEMENT AUTHORITY,

Respondent,

-and-

SIGN, PICTORIAL & DISPLAYMEN, LOCAL 1447,  
I.B.P.A.T.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on five unfair practice charges filed against Respondents Carpenters' Union Local 623, Atlantic City Convention Center Authority, City of Atlantic City, Atlantic City Convention & Visitors Bureau and the Atlantic County Improvement Authority. The

Charging Party alleges that the Respondents conspired and made threats against Charging Party and certain private companies in order to deprive Charging Party of certain display work in the Atlantic City Convention Center and to secure that work for Carpenters' Union employees.

The Director concluded that most, if not all, of the allegations in the Charges concern Respondents' treatment of Charging Party as an employee organization representing, in this matter, employees of private companies. The Director noted that the Authority's regulation of display work within the Convention Center which is done by private display set-up contractors is a separate role from its role as a public employer and may not be cognizable under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

Further, the Director found that several of Charging Party's allegations were factually deficient in that they were too general to support the issuance of a complaint. The Director also found that the Authority has a managerial prerogative to determine qualifications for employment and the types and numbers of employees which it will require to staff the Center. Finally, the Director noted that the Charging Party had filed similar charges with the National Labor Relations Board and, after investigation and hearings, the Board concluded that employees represented by the Carpenters' Union were entitled to perform the disputed work in the Atlantic City Convention Center and that the actions taken by the Carpenters' Union to protect that work were lawful.

Accordingly, the Director concluded that the allegations in the Charges do not constitute unfair practices by the Respondents, within the meaning of the Act, upon which formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues.

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I.B.P.A.T.,

Charging Party.

Appearances:

For the Respondent Carpenters' Local 623  
John Holzermer, Business Rep.

For the Respondent Convention Center Authority  
Wolf, Block, Schorr & Solis-Cohen, Esqs.  
(Robert Wachs, of counsel)

For the Respondent City of Atlantic City  
Murray and Murray, Esqs.  
(Robert E. Murray, of counsel)

For the Respondent Convention & Visitors Bureau  
Horn, Kaplan, Goldberg, Gorny & Daniels, Esqs.  
(Leonard C. Horn, of counsel)

For the Respondent County Improvement Authority  
Kevin Bradway, Esq.

For the Charging Party Local 1447, IBPAT  
William J. Toland, Financial Secretary  
Timothy C. Burton, Business Manager

REFUSAL TO ISSUE COMPLAINT

Five Unfair Practice Charges were filed on April 26, 1983 by the Sign, Pictorial and Displaymen, Local 1447, International Brotherhood of Painters and Allied Trades ("Charging Party" or "Local 1477") against five respondents as follows: Docket No. CO-83-286 -- United Brotherhood of Carpenters and Joiners of America, Local 623 ("Carpenters' Union"); Docket No. CO-83-287 -- Atlantic City Convention Center Authority ("Authority"); Docket No. CO-83-288 -- City of Atlantic City ("City"); Docket No. CO-83-289 -- Atlantic City Convention and Visitors Bureau ("Visitors Bureau"); and Docket No. CO-83-290 -- Atlantic County Improvement Authority ("ACIA").

The charges allege that the Respondents have violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). More specifically, Charging Party alleges that the Respondents violated subsections 5.4(a)(1), (2) and (7) and (b)(1),

(2) and (5) of the Act<sup>1/</sup> when they: threatened that the Authority would be picketed unless Local 1447 employees were discharged and replaced with employees from the Carpenters' Union; conspired to force recognition of the Carpenters' Union by certain private employers for work which those employers had collective bargaining agreements with Local 1447; acted in concert to deprive the members of Local 1447 of certain display work at the Atlantic City Convention Center to which they were entitled; and made threats of retaliation against Charging Party, Local 1447, and certain private employers for attempting to enforce their contractual and statutory rights.

N.J.S.A. 34:13A-5.4(c) provides, in part, that the Commission shall have the power to prevent anyone from engaging in

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1/ Subsections 5.4(a)(1), (2) and (7) 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; (7) Violating any of the rules and regulations established by the commission."

Subsections 5.4(b)(1), (2) and (5) prohibit employee organizations, 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) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; (5) Violating any of the rules and regulations established by the commission."

any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge.<sup>2/</sup> The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues.<sup>3/</sup> If this standard is not met, I may decline to issue a complaint.<sup>4/</sup>

The Charging Party's allegations are as follows. The Atlantic City Convention Center Authority is responsible for the operation of the Atlantic City Convention Center. The management and employees of the Authority are paid by the City of Atlantic City. When a convention comes to the Center, the public employer (Atlantic City Convention Center Authority) "sells" carpentry

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<sup>2/</sup> 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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

<sup>3/</sup> N.J.A.C. 19:14-2.1.

<sup>4/</sup> N.J.A.C. 19:14-2.3.

services to the various private exhibitors who participate in the convention. These exhibitors are billed by the Authority for work performed and for a service charge for procuring the carpentry services.

Local 1447 contends that private exhibitor companies cannot hire carpenters directly from the Carpenters' Union for work within the Center. They must go through the Authority to procure carpenters for display work within the Center. Exhibitors at the Center also contract directly with private display set-up companies to assemble their convention displays.

Charging Party alleges that since 1946, it has provided displaymen to private display set-up contractors of exhibitors at the Center. Local 1447 has collective negotiations agreements with many display contractors who have regularly operated at the Center. Local 1447 alleges that over the years, these contractors have been intimidated into hiring carpenters in a stated proportion to the number of displaymen hired for a display job. The number of carpenters thus "forced" onto private display contractors has increased over the years to the point where today, display contractors must charge their client exhibitors more for the same display set-up service than the Authority itself charges to set up displays at the Center. Local 1447 alleges that the Authority is acting in concert with and as representative of the Carpenters' Union, and is trying to control the means of production (for display set up services) and thereby force private display contractors to

charge higher prices in competing with the Authority to provide display services.

The Carpenters' Union argues that the Commission does not have jurisdiction over this matter. The Atlantic City Convention Center Authority also contends that the Commission has no jurisdiction over this matter. It further states that Local 1447 filed similar charges with the National Labor Relations Board, that the Commission is preempted by the NLRB having asserted jurisdiction in this matter, that the Commission has no mechanism for the resolution of work jurisdiction disputes as does the NLRB, that the NLRB has -- through its jurisdictional dispute resolution mechanism -- resolved the dispute underlying the instant unfair practice charges, and that the Board's decision is res judicata of the instant unfair practice charges. Accordingly, the Authority requests that the instant charges be dismissed. The Atlantic City Convention and Visitors Bureau denies that it has committed any unfair practices. The City of Atlantic City and the Atlantic County Improvement Authority did not answer the charges.<sup>5/</sup>

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The Atlantic City Convention Center Authority is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and is subject to

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<sup>5/</sup> The processing of these charges was pended during the parties' litigation of the related charges before the National Labor Relations Board.



its provisions. The United Brotherhood of Carpenters and Joiners of America, Local 623 is an employee representative within the meaning of the Act and is subject to its provisions. The Sign, Pictorial and Displaymen's Union, Local 1447, IBPAT is an employee representative which, in this matter, represents certain employees of private display set-up companies.

On February 14, 1985, the National Labor Relations Board issued its decision in two unfair practice cases filed, respectively, by Local 1447 and the Atlantic City Convention Center Authority. These charges involved some of the same facts and underlying disputes as those raised in the instant unfair practice charges. In its charge filed with the NLRB, Local 1447 alleged that the public employers involved in these matters had acted as agents of and in concert with the Carpenters' Union and that the Carpenters' Union attempted to coerce certain employers into giving their (Carpenters' Union) employees the display work within the Convention Center.

The Regional Director of the NLRB initially refused to issue a complaint on Local 1447's charges. The Regional Director concluded that (a) the Atlantic City Convention Center Authority properly controlled the display work which is generated within the Atlantic City Convention Center; (b) the Authority had a collective negotiations agreement with the Carpenters' Union concerning such work; and (c) any threats of picketing made by the Carpenters' Union to picket the Authority to protect its existing work therein was lawful.

Local 1447 appealed the Regional Director's refusal-to-issue complaint decision.<sup>6/</sup> Ultimately, a Section 10 [k] hearing was conducted concerning cross-consolidated charges filed by Local 1447 and the Authority -- to determine if anyone had engaged in prohibited activities in order to force the assignment of certain work to certain employees.

Local 1447 argued that the installation work involving prefabricated display booths for private contractors at the Convention Center should be awarded to Local 1447's employees. The Atlantic City Convention Center Authority and the Carpenters' Union contended that the disputed work should be awarded to Carpenters' Union employees. Each of the parties cited various factual and legal arguments to support their positions.

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<sup>6/</sup> Treating this appeal as a request for reconsideration, the Regional Director ordered a hearing (i.e., a Section 10 [k] hearing) to determine whether members of Local 1447 or the Carpenters' Union were entitled to the work in dispute. The Regional Director also reaffirmed his original decision concerning the balance of the appeal. This refusal-to-issue decision was affirmed by the Board.

29 USC § 160 (k) provides:

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 158(b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen....

The Board concluded that employees represented by the Carpenters' Union were entitled to perform the work in dispute.<sup>7/</sup> The Board reached this conclusion after considering past practice, area practice, relative skills required for the work and the employer's preferences.

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During the investigation of the charges, we wrote to the parties and indicated that based upon the record in this matter and the discussion contained in our correspondence, it appeared that there was not a sufficient basis upon which a complaint may issue here. All parties were afforded the opportunity to present additional statements of position and/or factual allegations concerning this dispute. We further stated that in the absence of such submissions, we were inclined to refuse to issue a complaint in this matter.

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<sup>7/</sup> In asserting jurisdiction over this matter, the NLRB stated as follows:

Although the Convention Center is not an employer under Section 2(2) of the Act, Section 8(b)(4)(D) of the Act provides that a union violates the act when it threatens a "person" in order to force an employer to assign work to employees represented by one labor organization rather than another. In this case, the Convention Center was the "person" threatened. ...

The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. (citations omitted) 274 NLRB No. 14 at p. 6, 118 LRRM 1358 (1985).

After receiving an extension of time to reply, the Charging Party submitted a reply raising the following issues: (1) Charging Party was "advised" by a Commission agent to file a charge with the National Labor Relations Board; (2) according to statute, the NLRB should not hear cases involving a political subdivision of any state; (3) in its hearing, the NLRB excluded the charges filed by Local 1447 against the City of Atlantic City, the Atlantic County Improvement Authority and the Atlantic City Convention and Visitors Bureau; (4) in the NLRB proceedings, Local 1447 did not claim work usually performed by Carpenters' Union employees; rather, it claimed work usually done by Local 1447 employees; the Board rendered an incorrect decision which the Commission is now relying upon in making its decision; (5) after noting that the NLRB has little experience in dealing with public employers, Charging Party contends that the Board's decision was based on an "erroneous reading of the record and was against the weight of the evidence" (Charging Party's correspondence dated January 20, 1988); (6) Charging Party's attorney objected to some of the facts found by the Board in its decision and the Board modified its findings as necessary; (7) if the Commission intended not to hear these matters, it should have had an agent present at the NLRB hearings; (8) Charging Party objects to our reliance "entirely" upon the decision of the NLRB; (9) Charging Party requests that the Commission conduct its own hearing in this case.

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Most of the allegations in these charges concern the Authority's treatment of Local 1447, an employee organization representing, in this context, employees of private display contractor companies. Thus, for purposes of this matter, Local 1447 is not a public employee representative nor are the employees it represents in these charges public employees. Local 1447's essential complaint concerns the Authority's regulation of display work within the Center. In the circumstances of this case, the issue of the Authority's regulation of display work within the Center performed by private display set-up contractors -- a role seemingly apart from its role as a public employer -- may not be cognizable under our Act.

Nothing in this record suggests that Charging Party's filing of additional charges with the NLRB prejudiced the charges which it filed with this Commission. The cases before the Commission and those related cases that were filed with the NLRB do not involve only public entities or private companies. Rather, the allegations of the charges implicate events and relationships between Local 1447, private display contractors, the Carpenters' Union and the Atlantic City Convention Center Authority. In the context of these cases, these events and relationships cannot be segmented. The NLRB asserted jurisdiction here in an effort to resolve the entire dispute between the various parties.

None of the allegations in this matter support the Charging Party's contention that the City of Atlantic City, the Atlantic

County Improvement Authority or the Atlantic City Convention and Visitors Bureau violated the Act. The substance of these charges concerns the actions of the Carpenters' Union and the Atlantic City Convention Center Authority: the Charging Party contends that these Respondents acted to deprive it of certain disputed work and thus interfered with Charging Party's rights protected by our Act.<sup>8/</sup>

We now turn to the balance of the allegations -- that on March 23, 1983, managerial executives of the Authority aided the Carpenters' Union and thereby interfered with the rights of employees represented by Local 1447; that on March 28, 1983, certain employees of the Authority and union representatives violated the Act; that certain persons threatened to picket the Convention Center unless private contractors discharged Local 1447 employees and replaced them with Carpenters' Union employees; that various labor union officials met to try to secure recognition of the Carpenters' Union by certain private employers; and that threats of retaliation

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<sup>8/</sup> We note Charging Party's contention that the Board excluded from its consideration charges filed by the Charging Party against the City of Atlantic City, the Atlantic County Improvement Authority and the Atlantic City Convention and Visitors Bureau. Because none of the allegations in the charges presently before the Commission support the issuance of a complaint against any of these Respondents, we do not see how the Board's exclusion of charges against these Respondents prejudiced Charging Party's cases before us.

were made by the Authority and the Carpenters' Union against Local 1447 and private contractor companies.<sup>9/</sup>

The first two assertions are general allegations that the Authority and various union officials, including some from the Carpenters' Union, violated the Act. These allegations are factually deficient and cannot serve as the basis for a complaint.

The latter three assertions all center around the display work in the Atlantic City Convention Center. A public employer has the managerial prerogative to determine the criteria for the selection of employees to perform particular duties; further, it has the managerial prerogative to select employees for specific assignments based upon its assessment of employees' skills; and a public employer has a managerial prerogative to determine the number and type of employment positions with which it will staff its facilities. Ridgefield Pk. Ed. Ass'n v. Ridgefield Pk. Bd. of Ed., 78 N.J. 144, (1978); Jersey City Bd. of Ed., P.E.R.C. No. 87-14, 12 NJPER 686 (¶17260 1986); City of Atlantic City, P.E.R.C. No. 85-89, 11 NJPER 140 (¶16062 1985); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981); Town of Kearny, P.E.R.C. No. 80-81, 6 NJPER 15 (¶11009 1979); and Tp. of Cinnaminson, P.E.R.C.

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<sup>9/</sup> The charge does not specifically state why the threats were made. Charging Party intimates that they were made to ensure that the Carpenters' Union was recognized as the bargaining agent of carpenter employees doing display work in the Convention Center.

No. 79-5, 4 NJPER 310 (¶4156 1978). Accordingly, the Authority may determine the qualifications for employment and the types and numbers of employees which it will require to do certain work within the Center.

The National Labor Relations Board asserted jurisdiction over the dispute between the Authority, the Carpenters' Union and Local 1447 concerning which union was entitled to certain work within the Atlantic City Convention Center. See United Brotherhood of Carpenters and Joiners of America, Local 623, 274 NLRB No. 14, 118 LRRM 1358 (1985). After an investigation and hearings were conducted to resolve certain disputes underlying unfair practice charges then before it, the National Labor Relations Board concluded that the employees represented by the Carpenters' Union were entitled to perform the disputed work within the Atlantic City Convention Center.

The Commission should give comity to certain determinations made by the National Labor Relations Board in this case, for the Board's case is related to these unfair practice charges. Cf. Downe Tp. Bd. of Ed., P.E.R.C. No. 87-154, 13 NJPER 576 (¶18211 1987). See also Lullo v. Int'l Assn. of Fire Fighters, Local 1066, 55 N.J. 409 (1970); N.J.A.C. 1:1-15.2; Evid. R. 9(2)(1); and N.J.A.C. 1:1-17.1 et seq.

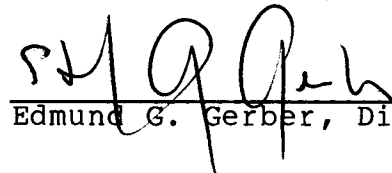
Based upon the record herein and the foregoing discussion, we find that there is not a sufficient basis upon which a complaint may issue in this matter. N.J.A.C. 19:14-2.1. We therefore find



that the allegations of the Charging Party do not constitute unfair practices by the Respondents, within the meaning of the New Jersey Employer-Employee Relations Act,<sup>10/</sup> upon which formal proceedings should be instituted in order to afford the parties an opportunity to litigate legal and factual issues.<sup>11/</sup>

Accordingly, we decline to issue a complaint and dismiss this matter in its entirety.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: March 28, 1988  
Trenton, New Jersey

<sup>10/</sup> We have not determined to refuse to issue a complaint in this matter merely because the NLRB ruled against Local 1447 in its related proceeding. We considered Charging Party's allegations and found that they do not meet our complaint issuance standard. N.J.A.C. 19:14-2.1. We also note that, in reaching our conclusions herein, we have not only relied upon the Board's decision. Rather, in the interest of administrative convenience and efficiency, we have given comity to those findings and conclusions in the Board's decision which are relevant to the issue before us.

Finally, we note that Charging Party criticized several aspects of the Board's decision. We note, however, that Charging Party did not appeal the decision of the NLRB to the U.S. Court of Appeals. Charging Party's dissatisfaction with the NLRB's decision is not properly directed to this agency and cannot bar our giving comity to the findings and conclusions in the Board's decision which are relevant to the cases before us.

<sup>11/</sup> See IBEW Local 269, P.E.R.C. No. 85-2, 10 NJPER 482 (¶15216 1984), aff'g D.U.P. No. 84-29, 10 NJPER 312 (¶15148 1984) (the Commission, in agreement with the Director of Unfair Practices, declined to issue a complaint on discrimination charges where substantially the same issues were litigated before and dismissed by the NLRB); and SEIU Local 79, 8 NPER MI-17077 (1986).