

D.U.P. NO. 78-5

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

In the Matter of

SUPERIOR OFFICERS, SAYREVILLE  
POLICE, P.B.A. LOCAL #98,

Respondent,

-and-

DOCKET NO. CE-78-12

BOROUGH OF SAYREVILLE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to a charge alleging that the Respondent's insistence upon having the president of a patrolmen organization present during a fact-finding session constitutes an unfair practice. The Director determines that the presence of the P.B.A. president at the factfinding session in itself does not constitute an unfair practice.

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Appearances:

For the Respondent  
Weinberg, Manoff and Dietz, Esqs.  
(Irwin Weinberg, of Counsel)

For the Charging Party  
Robert A. Blanda, Esq.

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 25, 1977 by the Borough of Sayreville (the "Borough") against the Superior Officers, Sayreville Police, PBA Local #98 (the "Superior Officers") alleging that the Superior Officers were engaged in unfair practices within the meaning of N.J.S.A 34:13A-5.4(b)(3) and (5).<sup>1/</sup>

The Unfair Practice Charge alleges that the Superior Officers have "decided that a patrolmen (sic) who is President of Local #98 P.B.A. has the right to be present during fact finding held pursuant to the Rules and Regulations of P.E.R.C." The Charge further alleges that while the contract provides that three negotiators be present during negotiations, the PBA president was not present during negotiations, or mediation, and was not requested to be present. The Charge states that the

<sup>1/</sup> These subsections prohibit employee organizations from "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit... (5) Violating any of the rules and regulations established by the commission."

respondent Superior Officers collective negotiations unit was separated from the Patrolmen of the Sayreville Police Department pursuant to a decision of the Commission which was upheld in the Appellate Division of the Superior Court of New Jersey.<sup>2/</sup>

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 charge.<sup>3/</sup> 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.<sup>4/</sup> The Commission's rules also provide that the undersigned may decline to issue a complaint.<sup>5/</sup>

The undersigned has reviewed the allegations contained in the instant Unfair Practice Charge and determines for the reasons stated below that the Commission's complaint issuance standard has not been met.

In reviewing the instant charge, the undersigned has carefully analyzed the allegations. The Charge does not allege that the President of Local #98 has been asked to attend a factfinding session as a principal, spokesman, or a negotiator for the Superior Officers unit. Indeed, the Borough asserts that the President has previously neither acted nor has been requested to negotiate for the Superior Officers unit.

<sup>2/</sup> In re Borough of Sayreville, E.D. No. 76-27, 2 NJPER 85 (1976), rev. denied, P.E.R.C. No. 76-35, 2 NJPER 174 (1976), aff'd, App. Div. Docket No. A-3325-75 (4/1/77), Petition for Certification denied, \_\_\_ N.J. \_\_\_ 7/20/71, the Commission found that superior officers could not be included in a negotiations unit with rank-in-file police personnel insofar as there existed a conflict of interest among these groups of personnel.

<sup>3/</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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."


<sup>4/</sup> N.J.A.C. 19:14-2.1.

<sup>5/</sup> N.J.A.C. 19:14-2.3.

Thus, reduced to essentials, the Borough's allegations are that the Superior Officers' insistence upon having the PBA president present during a factfinding session, without more, constitutes an unfair practice. The undersigned cannot agree. The mere presence of anyone in the room during factfinding does not, per se, constitute an unfair practice.

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
\_\_\_\_\_  
Carl Kurtzman, Director  
of Unfair Practices

DATED: November 21, 1977  
Trenton, New Jersey