

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, LOCAL 1035,

Respondent,

-and-

DOCKET NO. CE-83-24

HUNTERDON COUNTY BOARD OF
FREEHOLDERS,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practices declines to issue a complaint with respect an employer's charge that a majority representative violated N.J.S.A. 34:13A-5.4(b)(2) and (3) by communicating directly with County Freeholders rather than through the Freeholders' authorized representative. Based on an administrative investigation, the Administrator finds that the matter is moot and further proceedings are not warranted.

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Appearances:

For the Respondent
Steven P. Weissman, Associate Counsel

For the Charging Party
Harper & Hansbury, attorneys
(John J. Harper and Kenneth J. Hanko of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on June 27, 1983 by the Hunterdon County Board of Freeholders ("Charging Party" or "Board") against the Communications Workers of America, AFL-CIO, Local 1035 ("Respondent") alleging that the Respondent 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. ("Act"), specifically § 5.4(b)(2) and (3) ^{1/} by communicating directly to the Board of Freeholders rather than through the Board's authorized representative.

1/ These subsections prohibits employee organizations, their representatives or agents from: "(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. (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."

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. ^{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. The 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 and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below it appears to the undersigned that the Commission's complaint issuance standards have not been met.

By letter of July 20, 1983, the Respondent acknowledged that it had directly communicated with individual members of the Board by sending Freeholders carbon copies of letters addressed to the Board's designated representative for negotiations and grievance administration.

^{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

The Respondent indicated that the Charging Party had never previously complained of the conduct, which Respondent dates to November 1982, and that upon notification by the Charging Party to cease such conduct in May 1983, the Respondent did cease such conduct.

Based upon the above representation, which has not been contested by the Charging Party in subsequent communications with the Commission, it appears that the Charging Party's allegations have been rendered moot. Moreover, based on the dispositive action taken by the Respondent, there appears to be minimal likelihood of occurrence of the aggrieved conduct by the Respondent in the future. The undersigned, therefore, concludes that formal proceedings are not warranted and thus a complaint may not issue in this matter.

Union Cty. Reg. H.S. Bd/Ed, D.U.P. NO. 79-23, 5 NJPER 158 (¶ 10088 1979). ^{5/}

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: September 18, 1984
Trenton, New Jersey

^{5/} Moreover, State and Federal constitutional rights of public employees to communicate with governmental officials are not abridged by existence of rights and responsibilities under the Act. See E. Windsor Reg. Teachers Aides & Assistants Assn., D.U.P. No. 81-7, 6 NJPER 521 (¶ 11265 1980) and City of Hackensack, P.E.R.C. No. 78-71, 4 NJPER 190 (¶ 4096 1978) aff'd App. Div. Docket No. A-3562-77 (3/5/79). Even if this matter were not moot, the undersigned would not be inclined to issue a complaint. The facts do not show that Charging Party has attempted to improperly by-pass the Board's designated representative or to interfere with his designation.