

D.U.P. No. 2007-4

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

In the Matter of

COUNTY OF HUDSON,

Public Employer/Respondent,

-and-

Docket Nos. CI-2006-46 &
CI-2006-47

DISTRICT 1199J, NUHHCE,
AFSCME, AFL-CIO,

Employee Representative/Respondent,

-and-

PATRICK DESMOND, et al.,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices issues a complaint against Hudson County and District 1199J based on charges by a group of individuals that a County Freeholder illegally assisted 1199J's representation election campaigning, and that 1199J accepted the employer's assistance. Further, the Director issues a complaint on the allegations that the County illegally assisted 1199J by transporting its supporters to the polls.

The Director dismisses charging parties' other allegations against the County, namely that it permitted 1199J favorable access to the workplace for campaigning, that it terminated a union supporter, and that it investigated Charging Party Patrick Desmond because of his union activities. Charges against 1199J alleging that it offered an employee a job in exchange for her support were also dismissed. Charging Parties lacked standing to bring these allegations or the allegations lacked specificity.

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Charging Parties.

Appearances:

For the Public Employer,
Scarinci & Hollenbeck, LLC, attorneys
(Mic L. Radovici, of counsel)

For the Employee Representative,
Oxford Cohen, PC, attorneys
(Arnold S. Cohen, of counsel)

For the Charging Party,
Sciarra & Catrambone, L.L.C., attorneys
(Charles J. Sciarra, of counsel)

DECISION AND ORDER

On May 8 and 30, 2006, Patrick Desmond and other similarly situated public employees filed unfair practice charges and an amended charge against District 1199J, NUHHCE, AFSCME, AFL-CIO and Hudson County. The charges allege that the Respondents

unlawfully collaborated in advance of a secret ballot representation election and runoff election conducted by the Commission on March 31 and April 28, 2006 respectively (RO-2006-59).

Charging Parties allege in Docket Number CI-2006-47, that Hudson County violated 5.4a(1), (2), (4) and (7)^{1/} of the Act when Freeholder Jeff Dublin appeared, together with District 1199J representatives, at a Local 322 campaign meeting at the Moose Hall in Jersey City on March 22 and campaigned for 1199J. Local 322, UWA was the petitioner in RO-2006-059, and District 1199J was the incumbent in that case. The charge further alleges that the County unlawfully permitted District 1199J representatives to campaign on County property--at the departments of roads, corrections, parks and other locations--on work time in the weeks before the election and did not provide Local 322, UWA the same opportunity. The charge also alleges that Charging Party Desmond was "falsely written up for campaigning for Local 322, UWA"; that employee Darryl Middleton

^{1/} These provisions 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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (7) Violating any of the rules and regulations established by the commission."

was fired on the day before the election, "because he help[ed] campaign for Local 322, UWA"; and that the County provided buses to employees "partial to District 1199J" on the date of the election in order to "sway to vote."

Charging Parties allege in Docket Number CI-2006-46 that District 1199J violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4b(1) and (5)^{2/} by collaborating with the County in the election campaign by accepting Freeholder Dublin's assistance in campaigning at the Moose Lodge on March 22, and arranging with the County to transport its employee supporters to the polls on the day of the election. Additionally, the charge alleged that District 1199J promised Renee Meyers, a County employee and Local 322 supporter, a job with District 1199J in exchange for her support of that organization.

On May 30, 2006, Desmond filed an amended charge against the County (CI-2006-47). The amended charge alleges that at 2:30 p.m. on March 20, 2006, District 1199J organizer Margaret Ebel and two unnamed others campaigned at the Duncan Avenue Transcend parking lot; at the 911 department and at the Roads Garage, all

^{2/} These provisions 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; (5) Violating any of the rules and regulations established by the commission."

without authorization. It alleges that at 2 p.m. on April 20, 2006, two unnamed District 1199J organizers campaigned at the Duncan Avenue Transcend parking lot and at the Roads Garage; on April 26, four unnamed District 1199J organizers campaigned at the Duncan Avenue Transcend parking lot, the Roads Garage and 911 department. The amended charge alleges that on April 27, 2006, District 1199J organizers campaigned at the Meadowview Complex Youth House on County Avenue in Secaucus, where they "got into an altercation with Local 322, UWA supporters."

The amended charge also alleges that the County charged Desmond with "campaigning at the Kearny jail," the "internal investigation" of which lasted eight days in late February and early March 2006. Employee Middleton was allegedly terminated on April 27, 2006. It also alleges that on April 28, District 1199J supporters were permitted to use two Corrections Department County buses and a jeep to transport employees to the polling place at the Roads Garage.

On July 11, 2006, Hudson County filed a statement of position, denying that it engaged in any unfair practice. It contends that Freeholder Dublin is not its representative, nor does he possess managerial or administrative authority over employees. The County notes that the charge did not assert that the Freeholder threatened reprisal, used force or promised any benefit regarding employee voting or the outcome of the election.

The County also asserts that it provided 1199J and Local 322 equal access to campaign on County property, and that 1199J was only permitted additional time on County property for business purposes as the current negotiations representative. The County acknowledges that it provided buses to and from voting locations, and that the service was for all employees and that it had no way of knowing how the employees voted once they arrived at the voting location. The County denies that Desmond was reprimanded for campaigning for Local 322, and claims that Darryl Middleton was terminated due to his extensive disciplinary record.

On June 20, District 1199J filed a statement of position, contending that the allegations of the charge do not constitute unfair practices within the meaning of the Act. It asserts: Desmond was neither a party to the election, nor affiliated with Local 322, UWA, and accordingly, has no standing to pursue the charge; on May 16, 2006, the Commission issued a Certification of Representative declaring 1199J as the exclusive representative of the negotiations unit of blue-collar and white-collar employees of Hudson County, pursuant to the election conducted on April 28, 2006; no allegations justify a rescission of election results and Desmond failed to meet his burden to show that conduct actually or reasonably tended to interfere with employee free choice. District 1199J also contends that any alleged misconduct by its representatives on or about March 22, 2006 was before the first

election among the parties, which was cured by the runoff election on April 28. District 1199J also asserts that on April 28, it acted impartially and treated all unit employees equally.

The Commission has authority to issue a Complaint when it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.A.C. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. I may decline to issue a Complaint when the Complaint issuance standard has not been met. N.J.A.C. 19:14-2.3. I make the following:

FINDING OF FACTS

For more than 20 years, District 1199J, NUHHCE, AFSCME, AFL-CIO has been the majority representative of a negotiations unit of Hudson County's blue-collar and white-collar employees. On February 10, 2006, rival union Local 322, United Workers of America filed a representation petition seeking to represent the unit. We conducted an investigation and the parties signed an Agreement for Consent Election. On March 31, 2006, the Commission conducted a secret ballot election in which eligible employees cast their votes for District 1199J, Local 322 or no representative. No party received a majority of votes cast. In a run-off election conducted on April 28, 233 votes were cast for District 1199J and 175 votes were cast for Local 322, UWA. We issued a tally indicating that District 1199J received a majority

of valid votes cast. Local 322 filed and then withdrew timely election objections. N.J.A.C. 19:11-10.3(h). On May 16, 2006, District 1199J was certified as majority representative.

The charging party seeks as a remedy to its unfair practice charges a Commission order "vacat[ing the results of] April 28, 2006 election"

ANALYSIS

Desmond has alleged that on March 22, 2006, a County Freeholder and District 1199J unlawfully collaborated by jointly appearing and soliciting support on the organization's behalf at an election campaign meeting.

Section 5.4a(2) of the Act prohibits employer domination or interference with the formation, existence or administration of any employee organization.

A public employer violates section 5.4a(1) of the Act if its conduct tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979).

Accordingly, I find that the charge concerning Freeholder Dublin's alleged campaign assistance to District 1199 meets the

Commission's complaint issuance standard. I will issue a Complaint on these allegations.^{3/}

CI-2007-046

Charging Parties allege that District 1199J, by accepting Freeholder Dublin's assistance in soliciting employees and distributing campaign leaflets on its behalf on March 22, 2006, interfered with employee statutory rights, violating 5.4b(1) of the Act. An employee organization violates this provision of the Act if its actions tend to interfere with an employee's statutory rights. County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196

^{3/} Assuming that Desmond proves these allegations by a preponderance of evidence, however, I find that the remedy he seeks - vacating the results of the April 28, 2006 secret ballot election - is unavailable to him in this proceeding.

I have discretion to set aside an election and order a new one, following an investigation of election objections N.J.A.C. 19:11-10.3(j). Such objections must be filed within five days of the tally of ballots N.J.A.C. 19:11-10.3(h); N. J. State College of Medicine and Dentistry, E.D. No. 36, NJPER Supp. 508-509 (¶127 1971). Desmond filed his unfair practice charges on the sixth business day following the April 28 run-off election. Furthermore, an unfair practice charge cannot substitute for an election objection and **vacating the results of an election is not an available remedy in an unfair practice charge.** Borough of Kenilworth, DUP No. 2004-4, 29 NJPER 419 (¶141-2003).

Even if Desmond filed a timely election objection, he lacked standing to pursue that claim because only the "parties" to a case -that is, the employer or the competing employee organizations --may file such objections. N.J.A.C. 19;11-10.3(h). Charging Parties are individual employees, not representatives of any party to the election and do not have standing to assert the rights of the union. **Since Local 322 withdrew election objections, the results of the election are now final and not reviewable in this case.**

1983). This section is analogous to the prohibition set forth in 5.4a(1) of the Act, applicable to public employers. I find that this allegation meets the Complaint issuance standard and I will issue a Complaint on this allegation.

Desmond further alleges that on April 28, 2006, the day of the runoff election, the County provided two buses and a jeep to 1199J supporters to transport them to the Roads Garage polling place.

I find that these allegations, against the County and District 1199J, meet the Commission's Complaint issuance standard and a Complaint shall issue on these allegations.

Charging Party's allegations that 1199J promised Renee Meyers a job if she would support it, and that the County fired Darryl Middleton the day before the runoff election because he campaigned for Local 322, must be dismissed for lack of standing. Neither Meyers nor Middleton signed on the "Attached List of Charging Parties" which accompanied the unfair practice charges. Because the Charging Party is a group of employees and not the majority representative, it cannot file charges on behalf of anyone who is not a signatory to the charges. Accordingly, I dismiss the allegations regarding Meyers and Middleton.

Charging Party has not alleged facts in this proceeding to support a finding that subsection 5.4a(4) of the Act has been violated. There is no claim in this charge that a member of

Charging Party "has signed or filed an affidavit, petition or complaint or given any information or testimony under this act" which resulted in discharge or discrimination. N.J.S.A. 34:13A-5.4a(4). Accordingly, I dismiss the a(4) allegation.

Desmond alleges that the County and 1199J violated subsections 5.4a(7) and 5.4b(5), respectively, of the Act. A party alleging an unfair practice charge within the meaning of N.J.S.A. 34:13A-5.4a(7) or b(5) must specifically state both the rule and regulation alleged to have been violated and the alleged facts which constitute the violation. Madison Township Board of Education, E.D. No. 76-8, 1 NJPER 71 (1975); County of Hudson (Corrections), D.U.P. No. 2005-5, 30 NJPER 396, 399 (¶128 2004); Trenton Board of Education, D.U.P. No. 2000-8, 25 NJPER 437, 439 (¶30192 1999); Burlington Township Board of Education, D.U.P. No. 97-31, 23 NJPER 152, 153 (¶28073 1997). Here, Charging Party failed to indicate which specific Commission Rules or Regulations were allegedly violated and, therefore, I dismiss the 5.4a(7) and 5.4b(5) allegations.

Desmond alleges that the County allowed District 1199J to campaign among employees during work hours on County property, noting four specific dates and times when the workplace campaigning occurred, and claiming that "Local 322 was not afforded the same opportunity." Charging Parties further allege

that 1199J collaborated with the County for this access to freely enter the workplace during work hours in order to campaign.

First, a union's right to equal access for campaign purposes may only be asserted by that organization, not by individual employees. Thus, only Local 322 had standing to allege a violation of that right. Charging Parties, as individuals, do not have such standing.

Second, N.J.A.C. 19:14-1.3a(3) requires that a charge must contain the following:

A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

Desmond's allegations lack specificity regarding the County's role in permitting District 1199J to campaign in the workplace, as well as specificity regarding the alleged disparity between access given to District 1199J as compared with Local 322.

The Commission has found that during a representation campaign period, the employer may not provide rival organizations unequal access to employees. Cty. of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983); Union Cty. Reg. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976). A claim of unequal access will be sustained only when one organization shows that it made a request for and was denied the access granted to another organization. City of Newark, D.R. No. 95-2, 10 NJPER 342 (¶25176 1994);

Monmouth Cty., D.R. No. 92-24, 18 NJPER 201 (¶23090 1992);
Monmouth Cty., D.R. No. 92-11, 18 NJPER 79 (¶23034 1992); Essex
Cty. Prob. Dept., D.R. 87-20, 13 NJPER 170 (¶18076 1987); Ocean
Cty. Judiciary, D.R. No. 86-25, 12 NJPER 511 (¶17191 1986).^{4/}

The above-mentioned allegations provide details regarding 1199J workplace campaigning, but fail to provide specifics about Local 322 not being afforded the same opportunity. The allegations fail to specify which Local representative of 322 ever requested similar workplace access privileges, when such requests occurred, and which County representative denied the requests. Therefore, Charging Party's allegations of unequal access lack the specificity required by N.J.A.C. 19:14-1.3(a)3.

Desmond's allegation of being "written up" for campaigning for Local 322 at the Kearney Jail fails to specify a date when either the campaigning or the alleged County response occurred. Charging Party claims only that an "ensuing internal investigation was in late February and March of 2006 (8 day investigation)." I find that Desmond's allegation that he was "falsely written up" for campaigning lacks the specificity required by N.J.A.C. 19:14-1.3(a)3. It is therefore, dismissed.

^{4/} Ocean County Judic. cited LaPointe Machine Tool Company, 113 NLRB 172, 36 LRRM 1273, 1274 (1955), where the NLRB wrote: "It is not an interference with an election to permit one of two unions to solicit support on company time and property where there is no showing that the other union involved had requested, and had been denied, similar privileges."

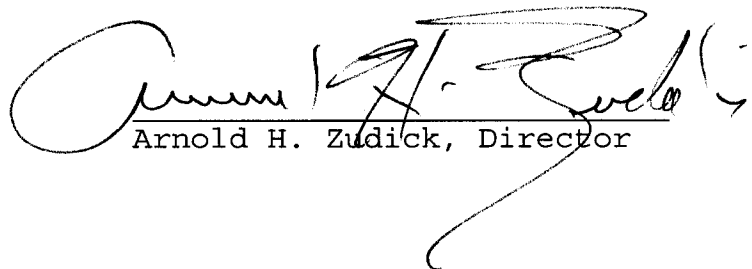
ORDER

Based upon the above, a Complaint will issue against the County on the allegations of illegal campaigning by Freeholder Dublin in violation of subsections 5.4a(1) and (2). A Complaint will also issue against the County on the allegations of illegal assistance with transportation to the polls in violation of subsection 5.4a(1).

Based upon the above, a Complaint will issue against 1199J on the allegations of illegal campaigning with Freeholder Dublin in violation of subsection 5.4b(1). A Complaint will also issue against 1199J on the allegations of accepting illegal assistance of transportation to the polls in violation of subsection 5.4b(1).

The remaining allegations are dismissed.^{5/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: December 13, 2006
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by December 26, 2006.

^{5/} N.J.A.C. 19:14-2.3.