

D.U.P. NO. 2014-15

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

In the Matter of

BAYONNE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2013-341

BAYONNE TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge brought by the Bayonne Teachers Association. The Association alleged that the Bayonne Board of Education violated subsections N.J.S.A. 34:13A-5.4a(1), (3) and (5) when it issued two separate letters to staff members promising a financial benefit if they work with the Board to resolve negotiations, and when it projected its salary proposal onto a large screen during a public meeting. The Director found that the Board's letters did not threaten reprisal or promise any benefits. The Board's letters clarified its latest contract offer, sought employee assistance in resolving the contract, and criticized the union, all of which is permissible under the law. The Director found no evidence to suggest that the parties negotiated ground rules limiting communication about the progress of negotiations, nor any facts suggesting that the Board's conduct violates section 5.4a(3) of the Act.

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Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro & Murphy, attorneys
(Robert J. Merryman, of counsel)

For the Charging Party,
Bucceri and Pincus, attorneys
(Gregory T. Syrek, of counsel)

REFUSAL TO ISSUE COMPLAINT OR DECISION

On May 31, 2013, the Bayonne Teachers Association (Association) filed an unfair practice charge against the Bayonne Board of Education (Board). The charge alleges that on March 19 and 28, 2013 and on April 25, 2013, the Board engaged in conduct designed to circumvent the normal negotiations process by dealing directly with members of the Association. The charge specifically alleges that on each of the first two dates, the Board issued a letter to staff members promising a financial benefit if they work with the Board to resolve negotiations. The charge also alleges that before and during an April 25, 2013

public Board meeting broadcast on a local cable television station, the Board projected onto a large screen its salary proposal. The charge alleges that this action by the Board, together with its previous letters, "chill the negotiations process." The Board's conduct allegedly violates 5.4a(1), (3), and (5)^{1/}, of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act). As a remedy, the Association seeks an order directing the Board to cease and desist from engaging in such conduct, and an order directing it to negotiate in good faith.

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

^{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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

The Association is the exclusive majority representative of a negotiations unit of all teachers, guidance counselors, psychologists, librarians, nurses, social workers, part-time teachers under contract, and coordinators employed by the Board. The parties are operating under a collective negotiations agreement that expired on August 31, 2010.

On or about March 19, 2013, the Board emailed collective negotiations unit members a single page document advising that it has proposed "reasonable salary increases," and that "limited resources are available," as reflected in its latest contract offer. The document also advises that its proposals have been met by Association leadership with ". . . silence and repelled by the fist of non-compromise." The letter advises that the Board has offered a proposal which would increase the funds available for salaries by 7.86% over four years. The Board concludes the letter as follows:

We hope learning the details of the latest contract offer will help you understand that we have been negotiating with your Association in good faith and allow you to work with us as well as we look forward to a fair and equitable contract resolution that provides our employees with reasonable raises during these difficult times.

On or about March 28, 2013, the Board issued a second letter to unit employees, providing another update on the status of negotiations. This letter states that the Association has

demanded a "17.85%" wage increase and summarizes the measures identified by the Association president and other members to meet that demand.^{2/} The Board wrote that it rejects those suggestions because of the negative impact they would have on students, teachers, and all of Bayonne's residents. The Board attached to its letter a copy of its proposed salary guide discussed at the negotiations table with the Association, which had been criticized by the Association President at a public meeting a few weeks earlier.

Finally, the Board projected an image of its proposed salary guide onto a large screen before and during an April 25, 2013 public meeting ostensibly called to honor a group of students. The meeting was broadcast on local cable networks.

ANALYSIS

The Act does not limit a public employer's right to express opinions about labor relations so long as the statements are not coercive. In Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 83-19, 7 NJPER 502, 503 (¶12223 1981), the Commission wrote:

A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes

^{2/} Suggestions in the letter include laying off up to 120 teachers; increasing class sizes; eliminating all sports teams, clubs, after school activities and extracurricular programs, facilities maintenance; and increasing "exponential[ly]" property taxes for Bayonne residents.

are inconsistent with good labor relations, which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal.

In addition, an employer has the right to advise employees of the conduct of negotiations if the communication is not coercive. Coercion may be defined as a threat of reprisal or force or promise of benefit. Camden Fire Dept., P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982), adopting H.E. No. 82-34, 8 NJPER 181, (¶13078 1982).

In Spotswood Bd. of Ed., P.E.R.C. No. 86-34, 11 NJPER 591 (¶16208 1985), the Commission adopted a Hearing Examiner's recommendation to dismiss an allegation that a Board violated the Act when, in the middle of negotiations for a successor agreement, it held a meeting with employees to explain its three options to fix a \$37,000 budget deficit, specifically, eliminating five positions; an across-the-board reduction of approximately one hour for every employee; or subcontracting work. The Board Secretary/Business Administrator expressed the Board's preference for an across-the-board reduction in hours, and advised that the Association had opposed that option. He concluded the meeting by asking the employees to discuss the matter with the Association. Spotswood Bd. of Ed., H.E. No. 85-43, 11 NJPER 382 (¶16138 1985).

The Hearing Examiner in Spotswood Bd. of Ed. relied in part upon Camden Fire Dept. and Rutgers, The State University, P.E.R.C. No. 83-136, 9 NJPER 276 (¶14127 1983), cases in which the Commission adopted the standard in section 8(c) of the National Labor Relations Act (NLRA). Section 8(c) of the NLRA provides:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

In Camden Fire Dept., H.E. No. 82-34, the Fire Chief distributed a memorandum to employees during negotiations criticizing the union president. The Hearing Examiner concluded, and the Commission later agreed, that there was no threat of reprisal or force or a promise of benefit.

In Rutgers, supra, the employer sent notices to unit employees during negotiations advising that, as a result of negotiations, the salary figure could be the same, higher or lower. The Commission adopted the Hearing Examiner's recommendation that there was no threat of reprisal or force or promise of benefits and dismissed the Complaint.

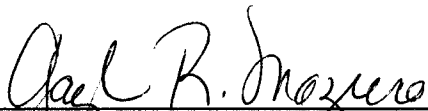
I also find that the Board's March 28, 2013 communication is permissible under the law. An employer has the right to criticize a union's bargaining strategy during negotiations, and it may detail its contract proposal to its employees and encourage them to vote on it.

In Middletown Township, D.U.P. No. 89-7, 15 NJPER 84 (¶20035 1988), the Director dismissed an unfair practice charge alleging that the Township violated the Act when it delivered a notice to all blue and white collar unit members detailing its most recent contract offer and urging that they vote on the proposal. Analogous to the facts in Middletown Township, the Board provided a copy of its proposal to unit members and asked them to "[t]ake the time to review it." This invitation does not tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act. N.J. Sports & Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979).

Included in their obligation to negotiate over terms and conditions of employment, a public employer and public employee representative have the right to negotiate over ground rules. Phillipsburg Bd. of Ed., P.E.R.C. No. 83-34, 8 NJPER 569 (¶13262 1982). Such ground rules for negotiations may limit or condition the parties' communications or release of information to the media. No facts suggest that the parties negotiated ground rules that limit communication about the progress of negotiations. I

therefore dismiss the Association's allegations that the Board's conduct was an attempt to deal directly with its members, promising its members a salary benefit if they worked with the Board to resolve negotiations, as well as the Association's assertion that the Board's actions amount to a refusal to negotiate in good faith in violation of 5.4a(1) and (5) of the Act.

Finally, no facts suggest that the Board's conduct violates section 5.4a(3) of the Act. Consequently, I also dismiss this allegation.



Gayl R. Mazuco
Director of Unfair Practices

DATED: June 16, 2014
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 June 26, 2014.