

D.U.P. NO. 2022-7

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-2019-098

BAYONNE TEACHERS ASSOCIATION,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge brought by the Bayonne Teachers Association alleging that the Bayonne Board of Education violated sections 5.4a(1), (2), (3), and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) when it provided unnamed unit member(s) unspecified information about a negotiations proposal the Board was planning to make in its next negotiations session. The Director determined that the charge did not satisfy the Act's complaint issuance standard because it did not present a "clear and concise" statement of the facts forming the basis of the charge pursuant to N.J.A.C. 19:14-1.3(a)(3). He further 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 violated section 5.4a(2) or (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,  
Zazzali, Fagella, Nowak, Kleinbaum  
& Friedman, attorneys  
(Richard A. Friedman, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On October 11, 2018, the Bayonne Teachers Association (Association) filed an unfair practice charge against the Bayonne Board of Education (Board). The charge alleges that on April 15, 2018, the Board violated section 5.4a(1), (2), (3) and (5)<sup>1/</sup>, of

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<sup>1/</sup> 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. (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) (continued...)"

the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) by providing unnamed unit member(s) “. . . information about a negotiations proposal the Board would make [to the Association] during the April 16<sup>th</sup> negotiations session.” The charge also alleges that an unnamed unit member posted the information to a social media account accessed by a significant number of unit members, simultaneously opining that the Association should accept the Board’s proposal. The charge alleges that the Board’s action “. . . interferes with the Association’s ability to administer its responsibilities to unit members” and demonstrates the Board’s failure to negotiate in good faith with the Association.

The Board denies that it failed to negotiate in good faith or interfered with the Association’s rights guaranteed by the Act. It contends that the Association’s allegations are so vague that they cannot provide a factual basis upon which a complaint could be issued.

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.

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1/ (...continued)  
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.”

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. I find the following facts.

The Association is the exclusive 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 applicable collective negotiations agreement extends from September 1, 2017 through August 31, 2021. During negotiations for that agreement, the parties had scheduled a negotiations session for April 16, 2018. According to the charge, on April 15, 2018, "the Board or its representative provided a unit member or members" information about a negotiations proposal that it intended to offer the Association the following day. Sometime thereafter, a unit member posted this information to a social media account "accessed by a significant number of unit members" and opined that the Association should accept the Board's proposal. In May 2018 the parties ultimately reached an agreement, ratified by the parties in June, 2018.

#### **ANALYSIS**

In the absence of an agreement on ground rules for collective negotiations, an employer has the right to communicate with its employees during periods of negotiations, and may inform

employees of the status of negotiations, so long as the statements are not coercive. Coercion has been defined as a threat of reprisal or force or promise of benefit. Bayonne Board of Education, D.U.P. No. 2014-15, 41 NJPER 40 (¶10 2014); 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 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 in dismissing the Complaint, that there was no threat of reprisal or force or a promise of benefit.

In Bayonne Board of Education, a previous matter involving the same parties, the Director dismissed an unfair practice charge alleging that the Board violated the Act when it sent two letters to unit members that clarified the status of negotiations; detailed the Board's proposal and encouraged Association members to vote on it; and criticized the Association. The Director concluded that absent facts indicating that the parties negotiated ground rules that limit communication about the progress of negotiations, the Board's conduct was not an attempt to deal directly with its members, and did not amount to a refusal to negotiate in good faith in violation of 5.4a(1) and (5) of the Act.

Any unfair practice charge alleging any violation of the Act must set forth a "clear and concise statement of the facts constituting the alleged unfair practice." N.J.A.C. 19:14-1.3(a)(3). A charging party must also "specify the date and place the alleged acts occurred" and the "names of the persons alleged to have committed such acts." Id.

In this case, the Association maintains that the Board's alleged action, i.e., releasing "information" about its negotiations proposal in advance of the negotiations session, violates the Board's duty to negotiate in good faith and interferes with the Association's ability to administer its responsibilities to unit members. This allegation doesn't meet specificity requirements. N.J.A.C. 19:14-1.3a(3). The charge does not identify the name(s) of any person(s), senders or recipients, involved in the alleged improper conduct. It does not specify what "information" was allegedly released to a unit member or members, whether the Board or its negotiations committee authorized its release, and whether the "information" accurately, or in any way, reflected the particulars of the Board's proposal to the Association on April 16, 2018. Nor does the charge specify what "information" was shared on social media, when it was shared, and who received it.

No facts suggest that the parties negotiated ground rules that could have limited communication about the progress of

negotiations. The charge doesn't set forth facts suggesting that the information allegedly widely distributed was coercive or included a threat of reprisal or force or a promise of benefits. In the absence of such facts, I decline to issue a complaint on the 5.4a(1) and (5) allegations. They are dismissed.

The Association also alleges that the Board violated section 5.4a(3), which prohibits employers from discriminating against employees to discourage their exercise of activity protected by the Act. The standards to be applied in these cases are found in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). Under Bridgewater, no violation will be found unless conduct protected by our Act is a substantial or motivating factor in an adverse personnel action. Id. at 246. In this matter, no facts supporting a violation of 5.4a(3) have been alleged. Accordingly, this allegation is also dismissed.

Section 5.4a(2) of the Act prohibits public employers from "dominating or interfering with the formation, existence or administration of any employee organization." In Atlantic Comm. Col., P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986), the Commission explained:

Domination exists when the organization is directed by the employer, rather than the employees. See, e.g., Han-Dee Spring & Mfg. Co., 132 NLRB No. 122, 48 LRRM 1566 (1961). Interference involves less severe misconduct than domination, so that the employee organization is deemed capable of functioning independently once the interference is

removed. It goes beyond merely interfering with an employee's section 5.3 rights; it must be aimed instead at the employee organization as an entity.

In Bor. of Carteret, H.E. No. 88-31, 14 NJPER 83 (¶19030 1988), the non-unit police Chief/fraternal PBA member sought an increase in his PBA convention monetary allotment from the local PBA president, based upon his obtaining an increase in off-duty employment for unit employees. The Hearing Examiner determined that the Chief's request created ". . . an impermissible tension between his PBA membership (even as a social member) and his status as an agent of the Borough." Id., 14 NJPER 86. The Hearing Examiner found that the Chief's conduct "unlawfully interfered with the administration of [the PBA local]."

No facts have been alleged demonstrating that the Board's conduct violates section 5.4a(2). I also decline to issue a Complaint on this allegation.

For all these reasons, I find that the charge does not meet the complaint issuance standard.



**ORDER**

The unfair practice charge is dismissed.

/s/Jonathan Roth

Jonathan Roth

Director of Unfair Practices

DATED: February 14, 2022  
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 February 25, 2022.**