

D.U.P. NO. 91-4

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

In the Matter of

UNION COUNTY PROBATION DEPARTMENT,

Respondent,

-and-

Docket No. CO-90-338

TEAMSTERS LOCAL 102,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint where the Charging Party alleged that the Public Employer refused to bargain jointly with representatives of two separate bargaining units and failed to notify the union of its desire to negotiate separately. An employer is not required to negotiate jointly with representatives of two separate and distinct bargaining units. Moreover, the employer's failure to notify the union and/or the shop steward of its intent to conduct separate negotiations did not prove bad faith or an attempt to avoid reaching an agreement. There was nothing in the parties' agreement which entitled the union or shop steward to such notice, nor had the parties negotiated any bargaining rules.

D.U.P. NO. 91-4

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

In the Matter of

UNION COUNTY PROBATION DEPARTMENT,

Respondent,

-and-

Docket No. CO-90-338

TEAMSTERS LOCAL 102,

Charging Party.

Appearances:

For the Respondent,  
Joan Kane Josephson, Chief, Labor Relations

For the Charging Party,  
Richard A. Weinmann, attorney

REFUSAL TO ISSUE COMPLAINT

On May 21, 1990, Teamsters Local 102 ("Teamsters" or "union") filed an unfair practice charge against the Union County Probation Department ("Judiciary") alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5).<sup>1/</sup> The charge alleges that the Judiciary violated the Act when it refused to bargain

---

<sup>1/</sup> These subsections 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. (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.

jointly with representatives of the Probation Officers unit and the Investigators unit for a successor agreement and when it failed to notify the union of its desire to negotiate separately.

The Union County Probation Officers and Senior Probation Officers are represented by the Teamsters in a separate unit of approximately 100 people. The Union County Investigators are also represented by the Teamsters in a separate unit of approximately 25 people. Both units have been in existence for at least the last nine years.

The last written, signed agreements for both groups expired December 31, 1986. There are no successor agreements covering the period January 1, 1987 through December 31, 1989. Rather, the Judiciary implemented the terms and conditions of employment set forth in a fact-finders report which issued after the parties were at impasse.

The Teamsters allege that, for at least the last three contracts, the Probation Officers and the Investigators have negotiated jointly with the Judiciary. The Judiciary denies this pattern, although it does admit that towards the end of the negotiations for the successor to the 1984-86 agreements, the units did negotiate jointly and went to fact-finding together.

A negotiations session was scheduled for March 26, 1990. The shop steward for the Investigators claims that she was informed that the negotiations on that date would be joint with the representatives from the Probation Officers unit. Accordingly, she

did not feel it was necessary to prepare herself to represent her members separately. The Judiciary contends that members of the negotiation teams for both units were informed that the Judiciary would not consent to joint negotiations.

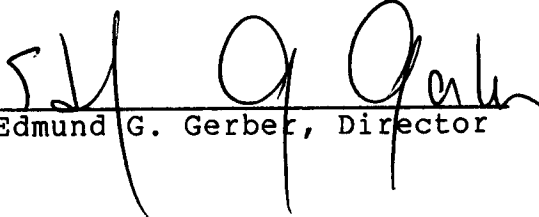
An employer is not required to negotiate jointly with the representatives of two separate and distinct bargaining units. See Oil, Chemical & Atomic Workers v. NLRB, 84 LRRM 2581, 2583 (U.S. Ct. of App., D.C. Cir, 1973). There is no dispute that the Investigators and the Probation Officers units are separate units and covered by separate contracts. Accordingly, the Judiciary may insist on separate negotiations sessions. Assuming that the Judiciary had consented to joint negotiations in the past or that a "practice" could be established, it still would have the right to withdraw that consent and return to separate sessions with its separate units.

The failure of the Judiciary to notify the union and/or the Investigator's shop steward of its intent to conduct separate negotiations is not an independent unfair practice. The test of good faith negotiations is whether the parties evince a sincere desire to reach an agreement. It is unfortunate that the shop steward was not prepared to negotiate for the separate unit of Investigators. While this may have been embarrassing for the union,

this alone does not prove the employer was attempting to avoid reaching an agreement.<sup>2/</sup>

Accordingly, I find the Commission's complaint issuance standard has not been met and decline to issue a complaint on the allegations in this charge.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: August 8, 1990  
Trenton, New Jersey

---

<sup>2/</sup> There is nothing in the parties' agreements which entitles the union or the shop steward to such notice, nor have the parties negotiated any bargaining rules.