

D.U.P. NO. 92-18

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

In the Matter of

MERCHANTVILLE BOARD OF EDUCATION,

Charging Party,

-and-

Docket No. CE-91-12

MERCHANTVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that a majority representative violated subsections 5.4(b)(1), (2) and (3) of the Act when it sent a letter to another employee organization concerning one of its unit members who is also employed as a Board member of the Merchantville Board of Education.

The Director determined that the letter did not threaten expulsion or some other act of retaliation. Accordingly, he dismissed the charge.

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Appearances:

For the Charging Party
Davis, Reberkenny & Abramowitz, attorneys
(William D. Hogan, of counsel)

For the Respondent
Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 29, 1991, the Merchantville Board of Education ("Board") filed an unfair practice charge against the Merchantville Education Association ("Association"). The Board alleges that the Association violated subsection 5.4(b)(1), (2) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") when it sent a letter to the Camden Education Association ("CEA") concerning a member of the Board who is also employed as a teacher by the Camden Board of Education and is a member of and represented by the CEA. The Board alleges that the letter was sent during an impasse in collective negotiations with the Association "to intimidate Linda Brancato, a member of the Board, in carrying

out her functions as a Board member, by attempting to cause Brancato's own union, the CEA, to put pressure on her...." A copy of the letter was attached to the charge.

On or about March 5, 1991, the Association filed a response, denying it had engaged in any unfair practice. The Association asserts that Brancato does not have a statutory right to serve on the Board; that as a Board member she is entitled only to rights of a public employer (which are in turn limited, i.e., 5.4(b) outlaws conduct which interferes with negotiations or with the adjustment of grievances); that the disputed letter does not tend to interfere with employer rights; nor does it impose discipline, and finally, the Association denies that it failed to negotiate in good faith.

The parties have tried unsuccessfully to resolve this matter. On or about April 10, 1992, I issued a letter tentatively dismissing the charge. No party filed a response.

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 charged.^{1/} The Commission

^{1/} 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,

has delegated its authority to issue complaints to me 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.^{2/} The Commission's rules provide that I may decline to issue a complaint.^{3/}

An employee organization violates subsection 5.4(b)(1) when its actions tend to interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by the Act, provided the actions lack a legitimate and substantial organizational justification. FOP Newark Lodge #12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990). Cases litigated under this subsection typically concern the lawfulness of a union's expulsion of discordant elements; see Bergen Cty. PBA (Saleem), P.E.R.C. No. 86-38, 11 NJPER 596 (¶16212 1985); FMBA Local No. 35 (Carrigino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983); Council No. 5, NJCSA (Labriola), P.E.R.C. No. 82-75, 8 NJPER 123 (¶13053 1982); PBA Local

1/ Footnote Continued From Previous Page

shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

2/ N.J.A.C. 19:14-2.1.

3/ N.J.A.C. 19:14-2.3.

No. 199 (Rasheed Abdul-Haqq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980).

The Board alleges that the Association's letter interfered with Brancato's efforts "...at carrying out her functions as a Board member..." and with "her rights as a public employee in the Camden School District and as a member of the CEA." Subsection (b)(1) does not protect public employees acting as public employer representatives. Such employees are simply not "forming, joining or assisting an employee organization or [refraining] from such activity" under section 5.3 of the Act. The Board has not asserted facts showing how Brancato's rights as a public employee were violated. Nor has it asserted facts showing how her rights as an employee of the Camden school district were violated.

An employee organization violates subsection 5.4(b)(2) when its "coercive pattern of conduct" interferes with or restrains the public employer's choice of a representative for purposes of collective negotiations. Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985); Franklin Bor. Bd. of Ed., P.E.R.C. No. 91-104, 17 NJPER 302 (¶22133 1991).

In Franklin, the Commission considered whether the expulsion of a union member for participating on an employer's negotiations committee violated subsection 5.4(b)(2). Specifically, a National Education Association bylaw permitted an affiliate organization to request that members of their school boards' negotiating teams be denied membership in the Associations. Two

Franklin Board members who were employed as teachers in other districts were expelled from the NEA shortly after a tentative agreement was reached in Franklin.

The Commission found a violation of the Act, stating that the bylaw,

...could be used to penalize board members whose actions are not perceived to be in accord with a local affiliates negotiations interest. Also, the threat of expulsion could influence a union member's decisions while negotiating on behalf of a board. Such influence affects a board's statutory right to select its negotiations representative without union interference. (emphasis added).

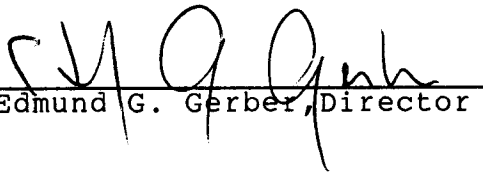
[17 NJPER 303].

This case does not concern the expulsion or threatened expulsion of an NJEA member who also served on a school board. The letter refers to that member's "derogatory" comments about other NJEA members as "extremely inappropriate and unprofessional" and it asks the Association for "support." At worst, these references solicit an unspecified censorious act. It would remain for the CEA to take some act threatening expulsion or some other discipline of its member to warrant the issuance of a complaint. Under these circumstances, I find that a Complaint and Notice of Hearing shall not be issued on this allegation.


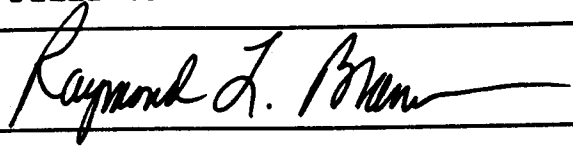
An employee organization violates subsection 5.4(b)(3) of the Act when it refuses to negotiate in good faith with the public employer. The Board has not asserted facts showing how the alleged interference with its Board member negatively affected the overall

collective negotiations with the Association or impeded reaching an agreement. See Downe Tp. Bd. of Ed. and Phillipsburg Bd. of Ed., P.E.R.C. No. 83-34, 8 NJPER 569 (¶13262 1982); Bor. of Flemington, P.E.R.C. No. 88-82, 14 NJPER 240 (¶19087 1988). Accordingly, I refuse to order a Complaint and Notice of Hearing on this allegation and dismiss the entire charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: May 5, 1992
Trenton, New Jersey

 New Jersey Department of Labor		(R-8-85)	AD-201	NO.
		ADMINISTRATIVE ORDER		
DATE ISSUED	EFFECTIVE DATE	SUPERSEDES		
5-20-92	6-1-92			
SUBJECT				
POLICY ON SMOKING IN THE WORKPLACE, FIELD OFFICES				
ISSUED BY				
Raymond L. Bramucci, Commissioner				

I. BACKGROUND

Recognizing that the health risks created by smoking are quite serious, both to the smoker and to the non-smoker through second-hand smoke, and the responsibility as an employer to protect the rights of non-smokers by providing them with a smoke-free working environment, the Department of Labor hereby revises its field office smoking policy.

II. POLICY

- A. Effective Monday, June 1, 1992, no person will be permitted to smoke at any time at any place in any office occupied exclusively by Department of Labor employees. This ban on smoking includes private offices, open work areas, hallways, corridors, stairwells, elevators, lobbies, entrance or exit ways, bathrooms, lunch or break areas, cafeterias, and each and every other location without exception.

This ban on smoking is specifically intended to eliminate smoking in Department of Labor field office locations.

- B. As to those field office locations or buildings which the Department of Labor shares use and occupancy with other public sector or private sector employees, the Department of Labor policy on smoking in such facilities will be: that no person, employee or otherwise, will be permitted to smoke in any area utilized and occupied as DOL space at any time. This shall include private offices, break rooms for employees, etc.
- C. There will be strict enforcement and compliance with this policy, banning smoking in the workplace, without exception.

III. IMPLEMENTATION

We are hopeful that disciplinary action will not be required, but employees are hereby placed on notice that appropriate disciplinary action for infractions will be utilized as warranted.

Appropriate "Smoke-Free Building" signs will be conspicuously posted as necessary in offices affected by this pronouncement. A copy of this Administrative Order declaring the policy shall be posted on all employee bulletin boards.

The Smoke-Free Environment Policy addressing this issue for the Department of Labor Building at John Fitch Plaza, Trenton, New Jersey, issued by memorandum dated July 3, 1991, remains in effect without modification.