D.U.P. NO. 81-25

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

In the Matter of

WEEHAWKEN EDUCATIONAL ASSOCIATION,

Respondent,

-and-

DOCKET NO. CO-81-166

SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO LOCAL 389,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to the allegations of a charging party that a representative of a rival union committed unfair practices by campaigning in the vicinity of a representation election balloting location. The Director notes that mere campaigning does not in itself constitute interference with, restraint or coercion of employees in the exercise of their rights.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on December 1, 1980 by Local 389 Service Employees International Union, AFL-CIO (the "Union") against the Weehawken Education Association (the "Association") alleging that the Association had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq (the "Act") specifically, N.J.S.A. 34:13A-5.4(b)(1). 1/

N.J.S.A. 34:13A-5.4(c) provides 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

1/ N.J.S.A. 34:13A-5.4(b)(1) prohibits employee organizations, their representatives or agents from: "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

complaint stating the unfair practice charge. [2/] The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This 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. [3/] The Commission rules provide that the undersigned may decline to issue a complaint. [4/]

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

The Union's charge relates to activities of the Association during the balloting hours of a presentation election conducted by the Public Employment Relations Commission November 19, 1980. Specifically, Service Employees International Union alleges that the members of the Association, stationed in hallways immediately accessible to the polling areas, were holding conversations with eligible voters and, in general, electioneering. The election took place in the Weehawken High School. In the Charge, which was filed two weeks after the election, and after the

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

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

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

Commission certified the Association as the exclusive representative, SEIU, Local 389 requested that the election be set aside and a new election ordered.

Rules promulgated by the Commission for the conduct of elections, set out in N.J.A.C. 19:11-9.2, provide inter alia for the timely filing of post-election objections where a party seeks to have the election set aside because of improper conduct. 5/ No timely objections were filed by SEIU; nor can the unfair practice charge, which was not filed within 5 days after the election, be considered as a timely post-election objection. Therefore, the relevant issue presented in the charge which SEIU has filed is not whether the alleged conduct disturbed the laboratory conditions of the election 6/ but whether the Association interfered with, restrained or coerced employees in the exercise of rights guaranteed by the Act in violation of Section 5.4(b)(1).

5/ "Withing five days after the tally of ballots has been furnished, any party may file with the Director of Representation an original and four copies of objections to the conduct of the election or conduct affecting the results of the election. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be made. A party filing objections must furhish evidence, such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law..."

6/ The Director of Representation will not set aside an election unless an objecting party has demonstrated that conduct has occurred which interfered with or reasonably tended to interfere with the employee's freedom of choice during the election. Campaigning in the vicinity of the polling place is not per se sufficient to warrant a finding of actual interference with the employee's free choice. See County of Atlantic, 5 NJPER (¶10010, 1979); In re Jersey City Department of Public Works, P.E.R.C. No. 43 (1970); affirmed, Superior Court, App. Div. (1971); AFSCME Local 1979 v. PERC, et al, 114 N.J. Super. 463 (App. Div. 1971). See also, In re City of Linden, E.D. No. 17 (1970); In re County of Hudson, E.D. No. 13 (1970); In re County of Camden, E.D. No. 9 (1970).

The Union alleges that the Association engaged in conduct prohibited by 5.4(b)(1) by campaigning and electioneering during balloting hours in the area adjacent to the voting site. The charge does not allege facts which would establish coercion, harassment, intimidation or restraint of employees in the exercise of protected rights.

The undersigned concludes that mere campaigning cannot constitute interference with, restraint or coercion of employees in the exercise of protected rights. Therefore, the undersigned declines to issue a complaint since the allegations, even if true, may not constitute an unfair practice under Section 5.4(b)(1) of the Act.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Carl Kurtzman, Director

DATED: June 16, 1981
Trenton, New Jersey