D.U.P. NO. 2000-17

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

In the Matter of

RUTHERFORD FREE PUBLIC LIBRARY,

Respondent,

-and- Docket No. CI-99-80

JEAN CAUGHEY & JANE TARANTINO,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses several allegations that Jean Caughey and Jane Tarantino filed against the Rutherford Free Public Library. Specifically, the Director finds that charging parties lack standing to assert 5.4a(5) allegations against the Library because the negotiations obligation runs from the public employer to the majority representative. Permitting individual employees to substitute themselves as the party with whom the employer must negotiate rather than the elected representative would be antithetical to the Act's exclusivity doctrine.

Similarly, the Director dismisses allegations of a 5.4a(6) violatios for lack of standing because the refusal to reduce a negotiated agreement to writing and execute such an agreement is an obligation which the public employer owes to the majority representative not to an individual. In addition, Caughey and Tarantino have demonstrated no discrimination in regard to any term or condition of employment to support a 5.4a(3) violation. Finally, no facts have been alleged supporting violations of 5.4a(2) or (7).

The Director issues a Complaint and Notice of Hearing with regard to the 5.4a(1) allegations concerning the February 9, 1999 statements of McPherson, Ryan and McCormack to Caughey.

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Appearances:

For the Respondent,
Lane Biviano, attorney

For the Charging Party,
John F. Hipp, attorney

DECISION

On June 29, 1999, Jean Caughey and Jane Tarantino (Charging Parties) filed an unfair practice charge with the Public Employment Relations Commission against their employer the Rutherford Public Library Board of Trustees (Library). Charging Parties allege the Library violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (5), (6) and (7)[1/] when (a) on February 9, 1999 the Borough Council liaison

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1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Footnote Continued on Next Page

asked Caughey if she was aware of the resulting "repercussions" after the union membership rejected a tentative collective agreement; (b) the same day, two Library Board negotiators told Caughey and another employee, both members of the union's negotiations team, that the employees could have gotten more money without a union and that employees could always withdraw from the union; (c) the Library refused to negotiate in retaliation for the employees forming a union; (d) the Borough Council liaison attempted at a February 25, 1999 meeting to persuade Caughey and Shop Steward Jane Tarantino to influence the membership to rescind its "no" vote on the proposed contract or to make changes in the memorandum of agreement; and (e) the Library refused to reduce to writing its offer to eliminate the wage disparity between Library employees and municipal employees if the union would agree to changes in health benefits.

1/ Footnote Continued From Previous Page

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) 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

The Library generally denies the allegations and maintains that several allegations in the charge are barred by the six-month statute of limitations. It further contends that Caughey and Tarantino as individuals have no standing to allege 5.4a(5) violations as the Library owes them no negotiations obligation; that the Library is not responsible for disagreements between Charging Parties and their union; that any statements made by its negotiators to union negotiations team members were attempts to gain insight into the membership "no" vote and to explore means to settle the contract; and that the Borough Council liaison became involved in the negotiations process at the request of Charging Parties.

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.

By letter of March 22, 2000, I advised the parties that I was inclined to dismiss all allegations of the charge except the allegation that the Library violated 5.4a(1) by its February 9, 1999 statements to Caughey. I set forth the basis upon which I arrived at these conclusions, including a finding that the Charging Parties lack standing as individuals to assert 5.4a(5) and a(6) violations. I provided the parties with an opportunity to respond. Charging

Parties responded, arguing that they have standing as individuals to assert 5.4a(5) and a(6) violations because the facts show that their union breached its duty of fair representation to the employees by: (a) agreeing to a revised contract settlement which resulted in a less favorable health benefits package for the employees, in exchange for an oral promise of parity and (b) trying to convince the membership to accept the revised contract terms.

I have considered the allegations of the charge and the parties arguments. Based upon the following, I find that the Complaint issuance standard has not been met with respect to several issues raised in the charge.

On July 8, 1997, we certified AFSCME Council 52, Local 2420 as the majority representative of the Library's non-supervisory employees. In October 1997, the Library voluntarily recognized AFSCME as the majority representative of a separate unit of the Library's supervisors.

The Library and AFSCME commenced negotiations for the two units in late 1997. AFSCME's negotiating team was comprised of AFSCME Staff Representative Mark Harrison, Shop Steward Jane Caughey who represented the non-supervisory employees and Shop Steward Judy Gerber who then represented the supervisors. Negotiating for the Library were its attorney together with Board members Ed Ryan and Ann McCormack. The parties declared impasse and invoked the mediation process in July 1998. On December 14, 1998, at the second mediation session, the negotiating teams signed a Memorandum of

Agreement which was to be submitted to the Library Board and the union membership in both units for ratification.

Charging Parties assert that prior to ratification, the Library sought to change the Memorandum's provisions relating to health benefits. Ryan enlisted the help of Bernadette McPherson, Borough Council liaison to the Library Board, to settle the issue of changes to the Memorandum with the union negotiators. On January 15, 1999, McPherson arranged a meeting between AFSCME Representative Harrison and Ryan to discuss changes to the Memorandum. Ryan allegedly proposed that, if the union agreed to change the previously agreed-upon health benefits, the Library would agree to parity between library employees and municipal employees in the next contract. Ryan refused to put this offer in writing.

The charge alleges that Harrison reported Ryan's offer to Caughey and Gerber and solicited their help in persuading union members to agree. Caughey and Gerber refused. Subsequently, McPherson contacted Caughey to solicit information about which employees were opposed to the health benefits changes and to determine whether the membership would ratify a revised Memorandum. McPherson wanted to know if Caughey could influence the membership to ratify, but Caughey refused.

Over the objections of Caughey and Gerber, Harrison allegedly permitted the Library to revise the settlement agreement to reflect changes in health benefits, subject to ratification by the membership. On February 9, 1999, the AFSCME membership of both

negotiations units voted unanimously to reject the revised settlement.

That same day, it is alleged that McPherson asked Caughey if she and Gerber as shop stewards understood the repercussions of a "no" vote. Later that day Ryan and McCormack asked Gerber and Caughey for their reasons for rejecting the Memorandum. During the discussion, Ryan and McCormack allegedly stated that if the employees had not joined a union they would have received more money and suggested that the employees could always get out of the union.

On February 25, 1999, McPherson arranged a luncheon meeting with the union committee. Caughey and Jane Tarantino, who had replaced Gerber as shop steward for the supervisors unit, attended as did Harrison and several others. After hearing from Harrison about the Ryan offer to modify health benefits in exchange for future wage parity, McPherson suggested that if the union were to rescind its "no" vote, she could get Ryan to commit the wage parity offer to writing in a codicil to the revised Memorandum. McPherson attempted to schedule a meeting with Ryan, Caughey and Tarantino to discuss her suggestion but was unable to do so because of scheduling conflicts.

In the evening of February 25, 1999, the union membership held a meeting and voted to replace Harrison as their representative. McPherson was notified and stated that she could do nothing more to resolve the contract if the union would not agree to the Ryan/Harrison proposal.

On May 6, 1999, the Rutherford Library Association filed a representation petition with the Commission. On May 19, 1999, AFSCME declined to intervene and disclaimed any further interest in representing the Library employees. On October 12, 1999, we certified the Rutherford Library Association as the exclusive representative of the Library's non-supervisory employees.

ANALYSIS

The Library raises a timeliness defense to the charge. N.J.S.A. 34:13A-5.4(c) precludes the Commission from issuing a Complaint where an unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice, unless the aggrieved person was prevented from filing. This charge, filed on June 29, 1999, alleges violations based on conduct occurring during and after January 1999. Any conduct occurring during the negotiations between AFSCME and the Library beginning in late 1997 and continuing up until the parties signed the Memorandum of Agreement on December 14, 1998 is beyond the six-month statute of limitations and must be dismissed. However, the gravamen of the charge concerns conduct occurring during January 1999 and afterwards and, therefore, the charge is not barred by the statute of limitations.

The charge alleges that the Library violated subsections 5.4a(5) and, derivatively, 5.4a(1) when it attempted to revise the December 1998 Memorandum of Agreement and to persuade the union

negotiations team--Caughey and Gerber and then later, Tarantino--to rescind its ratification "no" vote and support a revised Memorandum of Agreement. The threshold question is whether Caughey and Tarantino as individuals have standing to litigate the charge. I find that they do not.

Section 5.3 requires a public employer to negotiate in good faith with the majority representative. Section 5.4a(5) makes it an unfair practice for an employer to refuse to negotiate in good faith. Because the employer's duty to negotiate in good faith runs only to the majority representative, individual employees normally do not have standing to assert that an employer failed to negotiate in good faith with the majority representative in violation of 5.4a(5). Beall and N.J. Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp.2d 101 (¶85 App. Div. 1981); City of Jersey City (O'Brien), P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986); Union Cty. Ed. Serv. Comm. (Kelly), D.U.P. No. 2000-13, 26 NJPER 160 (¶31062 2000); Woodbine Bd. of Ed., D.U.P. No. 2000-6, 25 NJPER 394 (¶30170 1999); State of New Jersey (Dept. of Human Services), D.U.P. 96-5, 21 NJPER 309 (¶26196 1995).

Here, during the relevant period of time when the alleged conduct occurred, AFSCME was the employees' exclusive representative for negotiations; the Library had an obligation to negotiate in good faith with AFSCME during that period. Therefore, only AFSCME had standing to charge that the Library violated its duty to negotiate in good faith. The employees, as individuals, do not have that standing.

Charging Parties argue that, as individuals, they have standing because they have alleged facts which show that AFSCME has violated its duty of fair representation, namely AFSCME's consent to revise the memorandum of agreement which resulted in less favorable benefits for unit members and then its encouragement to the members to ratify the revised memorandum.2/ I disagree.

Charging Parties never named AFSCME as a respondent in this matter, nor alleged that AFSCME violated the Act. It is well beyond the Commission's six-month statute of limitations to do so now. N.J.S.A. 34:13A-5.4c. See N.J.S.A. 34:13A-5.3; Lullo v. IAff, 55 N.J. 409, 425-430 (1970).3/

Even if the Charging Parties had alleged that AFSCME violated 5.4b(1) of the Act, I find that AFSCME's conduct did not breach its duty of fair representation. Employee representatives must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. In Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Federation of Teachers, 142 N.J. Super. 486 (App. Div. 1976), the Court explained the standard to be applied in evaluating a union's conduct in collective negotiations:

2/ Charging Parties assert that, since it pled the relevant facts concerning AFSCME's collusive behavior, it is not necessary to formally charge AFSCME with a violation in order to step into the union's shoes to assert employer bad faith.

3/ Even if the Commission found the employer failed to negotiate in good faith, the resulting remedy for such a violation would be an order to negotiate in good faith with the majority representative. AFSCME has been displaced by another organization, which is apparently now in negotiations with the Library.

> Designation of an exclusive bargaining agent under the New Jersey Employer-Employee Relations Act confers on a union broad power to represent the members of the bargaining unit and to negotiate the terms and conditions of their employment. Along with this power comes the obligation to represent all employees 'without discrimination.' N.J.S.A. 34:13A-5.3.

The Court in Belen adopted the private sector model for assessing the majority representative's negotiations conduct, as found in Ford Motor Company v. Huffman, 345 U.S. 330 (1953),

> The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.
> [Id. at 338].

Here, AFSCME and the Library apparently jointly agreed to continue negotiations over the health benefit issue after a tentative agreement had been reached. It is not an unfair practice for the employer and the employee representative to agree to continue to negotiate over issues at any time, even after a contract has been signed.

In Council of New Jersey State College Locals, D.U.P. No. 81-8, 6 NJPER 531 (¶11271 1980), the Director dismissed a minority organization's charge alleging the majority representative failed to negotiate in good faith with the employer and reduce a negotiated agreement to writing. In considering whether the majority representative breached its duty of fair representation, the Director stated:

> The established standard for fair representation protects individual employees and classes of employees from indiscriminate treatment by the majority representative. Where a majority representative's activities affects all unit employees equally, the "quality" of representation, not its "fairness", is placed in issue and this conduct may not constitute an unfair practice. [Id. at 532.]

Charging Parties have only alleged that they were dissatisfied with the revised deal AFSCME entered into with the Board and its attempt to get the membership to ratify the revised agreement. This does not constitute a breach of AFSCME's duty to represent. Permitting individual employees to substitute themselves as the party with whom the employer must negotiate rather than the elected representative would be antithetical to the Act's exclusivity doctrine and must be rejected even in the case where the representative breached its duty to fairly represent the unit.

Based upon the foregoing, I find that the 5.4a(5) violations must be dismissed.

Similarly, the allegation of a 5.4a(6) violation must be rejected. Charging Parties allege that the Library violated 5.4a(6) of the Act by refusing to put the offer of parity with municipal employees in writing in exchange for the union's agreement on health benefit changes to the Memorandum of Agreement. This subsection states that public employers, their representatives or agents are prohibited from "refusing to reduce a negotiated agreement to writing and to sign such agreement". Just as an individual lacks standing to assert a 5.4a(5) violation, the refusal to reduce a

negotiated agreement to writing and execute such an agreement is an obligation which the public employer owes to the majority representative not to an individual. N.J. Transit and ATU (Elder), H.E. No. 89-26, 15 NJPER 248 (¶20100 1989), aff'd in part, P.E.R.C. No. 89-135, 15 NJPER 419 (¶20173 1989). I find that Charging Parties do not have standing to assert a 5.4a(6) violation.

Further, even if Charging Parties had standing, the facts demonstrate that there was no fully negotiated agreement between the Library Board and the union that was ripe for execution. Therefore, I dismiss Charging Parties' allegation that the Library refused to reduce to writing Ryan's offer of salary parity in the next contract.4/

I next consider whether the Library violated 5.4a(3). This provision prohibits discrimination in regard to hire or tenure of employment or any term and condition of employment. Based on the allegations stated in the charge, no employees have been discriminated against in regard to hire or tenure of employment or any term and condition of employment. Although Ryan and McCormack

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4/ I note that "parity" clauses which automatically extend to one unit increases in salary or benefits negotiated by other units are not mandatorily negotiable, and therefore unenforceable. See Rutherford Borough, P.E.R.C. No. 89-31, 14 NJPER 642 (¶19268 1988); So. Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); Montville Tp., P.E.R.C. No. 84-143, 10 NJPER 364 (¶15168 1984). However, clauses extending to unit employees salary or benefits unilaterally conferred upon other employees are negotiable. See Woodbridge Tp., P.E.R.C. No. 88-88, 14 NJPER 250 (¶19093 1988).

allegedly spoke to Caughey directly after the union membership refused to ratify the revised Memorandum and referred to "repercussions" resulting from the failure of Caughey and Gerber to support the Agreement, the Library has not formally acted -- there being no instituted repercussions alleged -- and, therefore, no employee's terms and conditions of employment have been affected. See Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986). See also Gorman, Basic Text on Labor Law, at 337 (employer action which interferes with concerted activity but does not involve discrimination regarding working conditions may be challenged only as a 5.4a(1)). Therefore, I dismiss the 5.4a(3) allegation and any derivative 5.4a(1).

I next consider whether the facts alleged in the charge support a violation of 5.4a(2). In Atlantic Community College, P.E.R.C. No. 87-33, 12 NJPER 764, 765 (¶17291 1986), the Commission discussed the standards for a 5.4a(2) violation:

> Domination exists when the organization is directed by the employer, rather than the employees.... 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.

The Commission has held that the type of activity prohibited by 5.4a(2) must be "pervasive employer control or manipulation of the employee organization itself...." North Brunswick Tp. Bd. Ed., P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶11095 1980).

There are no facts here which would support a claim that the employer dominated AFSCME or interfered with its existence. Therefore, I do not issue a complaint on the 5.4a(2) allegation against the Library.

Further, Charging Parties have submitted nothing to establish that the Library violated any of the rules and regulations established by the Commission in violation of 5.4a(7). Thus, I dismiss the allegation that the Library violated a(7) of the Act.

Finally, insofar as a violation of 5.4a(1) is alleged, an employer independently violates this provision if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp.; New Jersey Sports & Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). The charging party need not demonstrate an illegal motive or that actual interference resulted. New Jersey Sports & Exposition Auth.; Orange Bd. of Ed.

As to the statements made by McPherson to Caughey and Tarantino during the meeting on February 25, 1999, I find that these statements do not tend to interfere with employee rights. The alleged statements were in the context where Caughey and Tarantino were members of the union negotiations committee, participating in a meeting about contract issues. It appears that McPherson was attempting to settle the negotiations stalemate between the Library and Union. An employer does not commit an unfair practice by

attempting to resolve disputes. I find in this context that the alleged comments were neither coercive nor tended to interfere with employee rights. Therefore, I dismiss the alleged a(1) violation as it relates to the February 25, 1999 meeting.

The Charging Parties further allege that on February 9, 1999 Ryan and McCormack made statements to Caughey and Gerber that the employees could have received more money if they had not joined a union and that the employees could always get out of the union. Further, it is alleged that McPherson stated to Caughey that there would be "repercussions" resulting from Caughey's and Gerber's "no" vote on the ratification. Charging Parties allege that Ryan's, McCormack's and McPherson's statements constitute an independent 5.4a(1) violation of the Act. I issue a Complaint on this aspect of the charge.5/

Based on the foregoing, I find that the Commission's complaint issuance standard has not been met on the 5.4a(2),(3), (5), (6) and (7) allegations of the charge. I further find that the Commission's complaint issuance standard has not been met with regard to the alleged 5.4a(1) violation concerning the comments made on February 25, 1999. I dismiss these allegations. However, I find that the complaint issuance standard has been met with regard to the

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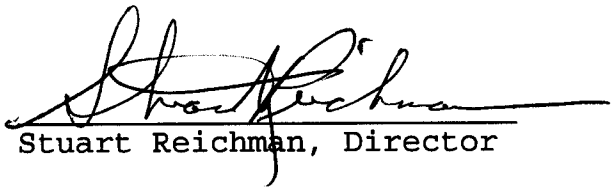
5/ I issue a Complaint only with respect to Caughey since she attended the meeting. I dismiss with respect to Tarantino who was not present at the meeting, thus has no standing to allege that her rights were violated.

5.4a(1) allegation concerning the February 9, 1999 statements of McPherson, Ryan and McCormack to Caughey.6/

ORDER

A Complaint and Notice of Hearing will issue with regard to Paragraphs (a) and (b) of the charge alleging violations of 5.4a(1) of the Act. All other allegations of the charge are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: June 15, 2000
Trenton, New Jersey

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