

D.U.P. NO. 93-43

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

In the Matter of

STATE OF NEW JERSEY (DEPE),

Respondent,

-and-

Docket No. CO-93-357

CWA, LOCAL 1037 & LOCAL 1038,

Charging Party.

STATE OF NEW JERSEY (DEPE),

Charging Party,

-and-

Docket Nos. CE-93-15
CE-93-16

CWA, LOCAL 1037 & LOCAL 1038,

Respondents.

SYNOPSIS

The Director of Unfair Practices dismisses charges filed by two CWA locals alleging the State failed to negotiate in good faith with the certified majority representative, the CWA National Union. The Director finds that only the majority representative, and not the locals, have standing to allege that the employer refused to negotiate.

Further, the Director refuses to issue a Complaint on two companion charges filed by the State, alleging that the two locals violated the Act by seeking to negotiate with the State.

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Appearances:

For the State of New Jersey,
Office of Employee Relations
(Melvin L. Gelade, Director)

For the CWA, Locals 1037 & 1038,
Reinhardt & Schachter, P.C.
(Paul Schachter, of counsel)

REFUSAL TO ISSUE COMPLAINT

On April 6, 1993, Communications Workers of America, Locals 1037 and 1038 filed an unfair practice charge against the State of New Jersey, alleging that the Department of Environmental Protection and Energy (DEPE) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A1 et seq. ("Act"), specifically,

subsections 5.4(a)(1) and (5)^{1/} by negotiating over an experimental "alternative workweek program" with one of CWA's local unions, rather than the CWA international union.

The charge further alleges that the CWA international union, rather than any of the locals, is the exclusive statutory representative of State employee units covered by the State-CWA collective negotiations agreements (administrative and clerical, professional, primary level supervisory and higher level supervisor units). The charge asserts that the State failed to negotiate in good faith by bypassing the international union and dealing directly with one of the locals.

The State agrees that the CWA international union, and not any of the component locals, is the certified, exclusive negotiations representative of the four units described above. Therefore, it argues that Locals 1037 and 1038 lack standing to bring these charges. The State further asserts that beginning in February 1993, the State engaged in negotiations with CWA international union representatives over the alternative workweek plan. After numerous conversations, meetings and exchanges of

^{1/} 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.

correspondence, CWA international representatives and State representatives came to a negotiated agreement over the specific terms of the DEPE alternative workweek plan. The terms of the agreement are detailed in correspondence between the State Office of Employee Relations and CWA International Representative Robert Pursell.

The State also filed unfair practice charges against Local 1037 and 1038, alleging that those locals violated 5.4(b)(1), (2), (4) and (5).^{2/} by seeking to further negotiate with the State over the DEPE workweek plan after the State concluded negotiations with CWA international representatives.

N.J.S.A. 34:13A-5.3 requires an employer to negotiate with the the majority representative:

Representatives designated or selected by public employees for the purposes of collective negotiation...shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b)

^{2/} These subsections prohibit employee organizations, 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) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (5) Violating any of the rules and regulations established by the commission."

any changes in terms and conditions of employment are made only through negotiations with the majority representative....

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees...Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

The key issue in this case is whether Locals 1037 and 1038 have standing to file and litigate the charges. In Essex County College, P.E.R.C. No. 87-81, 13 NJPER 75, 76 (¶18034 1986), the Commission stated:

Our law is settled that only the majority representative can litigate such a charge. See e.g., New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Docket No. A-1263-80T2. This principle is not a mere matter of procedure. To the contrary, it is predicated on the exclusive representation principle, the cornerstone of our Act. See Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 138-139 (1978); Lullo v. International Association of Firefighters, 55 N.J. 409 (1970).^{3/}

See also, New Jersey Dept. of Higher Education, P.E.R.C. No. 85-77, 11 NJPER 74 (¶16036 1985), aff'd App. Div. Dkt. Nos. A-2920-84T7 and A-3124-84T7 (4/7/86).

In New Jersey Turnpike Authority, the Commission stated,

^{3/} In Essex Cty., the local was the exclusive representative. The international union lacked standing to bring the (refusal to negotiate) charge.

...A charge must allege a violation of a right of the charging party protected by the statute. Since the right to negotiate is that of the majority representative, not an individual employee or even a group of individual employees, only the majority representative may charge the employer with a violation of the duty to negotiate. [6 NJPER at 561, n. 7]

Thus, Locals 1037 and 1038 can only enforce their statutory right to negotiate if they are the majority representatives of the four above-referenced State employee units. See Essex Cty College; New Jersey Dept. of Higher Education. Locals 1037 and 1038 acknowledge in their charge that the CWA international union, not the locals, is the majority representative of the State-wide units. The locals charge that the State did not negotiate with the international union. Accordingly, I find that Locals 1037 and 1038 do not have standing to raise this refusal to negotiate charge. Based upon the foregoing, I will not issue a complaint on this charge.

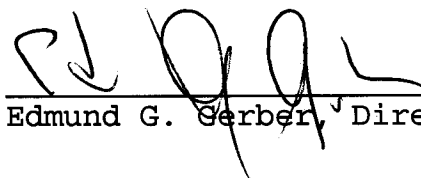
As to the State's charges against the locals, the State has not asserted facts which, if true, constitute a violation of the Act. When an organization attempts to negotiate with the employer when the organization is not the majority representative, it does not necessarily violate the Act. As noted above, the Act does not prohibit a non-majority representative from meeting with the employer, provided the majority representative is apprised of the meeting and the employer does not adjust employees' terms and conditions of employment as a result of such meetings. However, the employer must refrain from negotiating with an organization other

than the exclusive majority representative. Accordingly, I do not view the locals' alleged conduct in seeking to negotiate as a violation of the Act. Even assuming arguendo that such conduct could be construed as "interference with employee's rights" in violation of 5.4(b)(1), it would not further the purposes of the Act, in light of my dismissal of the locals' charges against the State, to issue a complaint on this matter.

Based on the above, I find the Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations of the either the locals' charges or the State's charges.^{4/}

These unfair practice charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: June 18, 1993
Trenton, New Jersey

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