D.U.P. NO. 94-39

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

In the Matter of

OLD BRIDGE BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-94-196

OLD BRIDGE EDUCATION ASSOCIATION,

Charging Party.

SEIU, LOCAL 74,

Respondent,

-and- Docket No. CI-94-38

PATRICIA FREEMAN, PATRICIA GARLAND,
DIANE SMITH,

Charging Parties.

OLD BRIDGE BOARD OF EDUCATION,

Public Employer,

-and- Docket No. RO-94-97

OLD BRIDGE EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Unfair Practices and Representation dismisses and refuses to accord blocking effect to unfair practice charges filed by the Old Bridge Education Association against the Old Bridge Board of Education and by Patricia Freeman, Patricia Garland and Diane Smith against SEIU Local 74. The charge against

the Board alleges that the Board colluded with and rushed into an agreement with the incumbent, SEIU, even though it knew a majority of unit employees desired to be represented by the Association and the ratification of the tentative agreement by the union membership was fatally flawed. The charge against SEIU alleges that the union failed to hold the necessary ratification meeting on the tentative agreement.

The Director finds that the Board had no obligation to cease negotiations with the incumbent, as no representation petition by the Association was then pending and in fact, under Bergen County, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983), it had an obligation to continue to negotiate. Further, the Director finds that since Freeman, Garland and Smith were no longer members of SEIU, they had no inherent right to participate in the ratification.

Finally, since the Director refused to accord blocking effect to the two charges, he dismissed the Association's representation petition as it was not timely filed under N.J.A.C. 19:11-2.8(c).

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OLD BRIDGE EDUCATION ASSOCIATION,

Petitioner.

Appearances:

For the Respondent Board of Education
Wilentz, Goldman & Spitzer, attorneys
(Harold G. Smith, of counsel)

For the Charging Party Education Association
Wills, O'Neill & Mellk, attorneys
(G. Robert Wills, of counsel)

For the Charging Party Patricia Freeman, et al.
Wills, O'Neill & Mellk, attorneys
(G. Robert Wills, of counsel)

For the Respondent SEIU Local 74
Manning, Raab, Dealy & Sturm, attorneys
(Ira Sturm, of counsel)

DECISION

On December 23, 1993, the Old Bridge Education Association filed an unfair practice charge with the Public Employment Relations Commission against the Old Bridge Board of Education, CO-94-196, 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), (2), (5) and (7)[1/] by colluding with and rushing into an agreement with the current majority representative, Service Employees International Union, Local 455/74 even though it knew that a majority of unit employees desired to be represented by the Association and the ratification of the tentative agreement by Local 455/74 membership was fatally flawed.

Also on December 23, 1993, Patricia Freeman, Patricia Garland and Diane Smith filed an unfair practice charge, Docket No. CI-94-38, against SEIU Local 455/74 alleging violations of

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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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (7) Violating any of the rules and regulations established by the commission."

5.4(b)(1), (3) and (5) of the Act.[2/] Specifically, these individuals allege that Local 455/74 failed to hold the necessary ratification meeting with respect to a tentative contract it had reached with the Board. As a result, the Board approved a contract that had never been properly ratified. They claim that through this conduct, Local 455/74 violated its duty to afford them fair and adequate representation.

On January 6, 1994, the Association filed a Petition for Certification of Public Employee Representative with the Commission seeking to represent the unit of approximately 130 lunchroom supervisors currently represented by Local 455/74.

On February 18, Local 455/74 intervened in the pending representation matter on the basis of its collective negotiations agreement with the Board which runs from July 1, 1993 through June 1, 1996. N.J.A.C. 19:11-2.7.

By letter dated March 2, 1994, the Charging Parties requested that their charges block the processing of the representation petition and submitted a statement and evidence in support of their position. They ask that the charges be accorded

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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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission."

blocking effect because, otherwise, the petition would be considered untimely. They assert that the nexus between the allegations of the charges and the conduct of a free and fair election is that the Association had obtained the requisite authorization and designation cards from unit members and consequently requested that the Board recognize the Association as the majority representative of the unit, or that the Board agree to the conduct of a representation election. However, the Association contends the Board ignored its request and instead conspired with Local 455/74 to hasten negotiations and reach a quick settlement. According to the Charging Parties, the agreement was never appropriately ratified by Local 455/74 membership and thus is null and void. Therefore, only an expired agreement exists; thus, because the petition is timely, an election should be held.

The Board takes no position on the blocking issue; however, it denies that it committed any unfair practices. It replies that the information provided to it by the Association did not relieve the Board of its continuing obligation to negotiate with Local 455/74 and did not create an obligation to negotiate with the Association. It denies that it colluded with and rushed into an agreement with Local 455/74. It further notes that it has no obligation to ensure that a contract was properly ratified by the union before it approved the contract. The Board states it has never had it done so in the past.

Local 455/74 denies that the ratification was conducted improperly. In any event, it claims there is no legal requirement that a labor organization allow members to ratify agreements. Further, according to Local 455/74, it is beyond our jurisdiction to address the issue of ratification, as it is an internal union matter. It also claims that the charge is not timely, as the ratification vote was held June 22, 1994, and the charge was not filed until December 23, 1993. Moreover, it notes that Freeman, Garland and Smith do not have standing to assert an (a)(5) violation.

We have conducted an administrative investigation to determine the relevant facts. N.J.A.C. 19:11-2.6. These facts appear.

On June 16, 1993, the Association wrote a letter to the Board stating that nearly all of the lunchroom supervisors had signed membership dues termination forms and requesting that the Board terminate dues deductions for Local 455/74, effective July 1, 1993. The letter also stated that this same group had signed membership applications in the Association, as well as authorization and designation cards, indicating to the employer the employees' desire to have the Association represent them. The letter also requested that the Board voluntarily recognize the Association as the bargaining agent for the lunchroom supervisors and begin negotiations with it. Finally, the letter stated that if the Board would not recognize the Association, it would file the appropriate papers with this Commission.

The Association states that on June 17, 1993, it submitted 110 dues termination forms to the Board's payroll office. According to the Board, the forms were submitted on June 23, not June 17, 1993.@ For purposes of this proceeding, I will accept the Association's position as accurate.

On June 21 and 23, 1993 negotiations were conducted between Local 455/74 and the Board. On June 23, a memorandum of agreement was signed by both parties. The agreement was subject to ratification by Local 455/74 membership and approval by the Board. According to Local 455/74, on June 23, 1993, it posted notices in all the schools that a ratification meeting would be held on June 24. On June 24, 1993, the ratification vote occurred; the 14 unit members who attended the ratification voted in favor of the agreement. At its June 30, 1993 meeting, the Board approved the contract.

On July 2 and 13, 1993, the Association wrote to the Board expressing its shock at the Board's approval of the contract in light of the fact that the Board knew of the lunchroom supervisors' desire to end their relationship with Local 455/74. The Association also questioned how negotiations were scheduled and completed so quickly, and noted that the Board's prior knowledge of the employees' dissatisfaction should have been enough to make it hesitate to schedule negotiations. They accused the Board of attempting to negotiate a sweetheart contract, in light of the fact that the Board knew no real ratification took place.

Analysis

The Commission does not automatically accord blocking effect to unfair practice charges. Rather, the party requesting the block must establish that there is a nexus between the allegations in the charge and the conduct of a free and fair election. State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981), mot. for recon. den. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981).

Here, I do not find there is a nexus between the allegations in the charges and the conduct of a free and fair election, as the charge allegations do not constitute unfair practices within the meaning of the Act.

First, the Association alleges that the Board and Local 455/74 improperly sped up negotiations and reached an agreement, in spite of the fact that the Board had been presented 110 membership termination forms. However, the Board was not obligated to cease negotiations with Local 455/74 under these circumstances. See Bergen County, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983); See also, CSEA Nassau Loc. 830, 16 PERB ¶3095 (1983). In Bergen Cty., we affirmed the bright line rule established in In re Middlesex Cty. (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981) which provides that an employer must maintain strict neutrality when faced with a pending representation petition by refusing to negotiate over future contracts with either incumbents or rival organizations. In Bergen County, we specifically rejected the rule

of the National Labor Relations Board in RCA DelCaribe Inc., 262 NLRB 116, 110 LRRM 1369 (1982), which requires that an employer stop negotiating with the incumbent if a good faith doubt of its majority status is raised through objective considerations. The Commission found that this rule would place employers in a position of uncertainty concerning their negotiations obligations and employees in a position of uncertainty concerning the employer's motivation by refusing to negotiate with the incumbent -- i.e., whether there was objective doubt of the incumbent's majority status or subjective preference for another organization.

Here, no representation petition by the Association was pending at the time negotiations between the Board and Local 455/74 took place. Thus, the Board was not obligated to stop negotiating with Local 455/74, and in fact, under Bergen County, it was obligated to continue to negotiate. See also, CSEA Nassau Loc. 830. While the Association arguably presented objective considerations by way of membership termination forms, in Bergen County, we specifically rejected the notion that the employer would be required to stop negotiating based upon such objective considerations. In light of the above, I find that Docket No. CO-94-196 fails to set forth an unfair practice under the Act. Accordingly, I dismiss it and thus, do not accord it blocking effect.

In Docket No. CI-94-38, Freemen, Garland and Smith complain they were never advised of the ratification meeting or permitted to vote on the tentative agreement. However, Freeman, Garland and

Smith attached to their charge statements reflecting that, prior to the ratification vote, they had withdrawn from Local 455/74 and had completed membership forms for the Association. Since they were no longer members of Local 455/74; they had no inherent right to participate in the ratification vote. Babris, D.U.P. No. 88-7, 14 NJPER 14 (¶19004 1987); Quinn v. Woodbridge Tp. Fed. of Teachers, Local 822, AFT, AFL-CIO, Middlesex Cty., Chancery Div. Dkt. No. C-2188-75 (6/22/76). Thus, under these circumstances, I find that Docket No. CI-94-38 fails to set forth an unfair practice under the Act. Accordingly, Docket No. CI-94-38 is hereby dismissed and thus, it is not accorded blocking effect.

Finally, since Docket Nos. CO-94-196 and CI-94-38 are not accorded blocking effect, I dismiss petition Docket No. RO-94-97, as it was not timely filed under N.J.A.C. 19:11-2.8(c)(3).

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: April 13, 1994
Trenton, New Jersey