

D.U.P. NO. 83-11

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

In the Matter of

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL NO. 210,

Respondent,

-and-

DOCKET NO. CI-83-11

DENNIS J. DiSANTI,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge filed by an individual who claimed that the majority representative improperly favored its supporters in negotiations with the employer. There are no factual allegations to support the claim that "union negotiators and avid supporters were well taken care of over and above other members." The fact that the majority representative failed to secure a salary for the individual which is consistent with the national average in his profession does not standing alone describe arbitrary, discriminatory, or bad faith representation.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on August 23, 1982, by Dennis J. DiSanti (the "Charging Party") against the International Brotherhood of Electrical Workers, Local No. 210 (the "Respondent") alleging that the Respondent was engaging 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(a)(2) ^{1/} and N.J.S.A. 34:13A-5.4(b)(2) and (4). ^{2/}

The Charging Party alleged that the Respondent violated the Act by negotiating disproportionate salary increases that benefited

^{1/} This subsection prohibits public employers, their representatives or agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization."

^{2/} These subsections prohibit employee organizations, their representatives or agents from: "(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 and (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

Respondent's negotiators and supporters. In addition, the Charging Party alleged that the negotiated salary for his title, chief accountant, is below the national average for salary remuneration.

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 charge. ^{3/} 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. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

For the reasons below, it appears to the undersigned that the Commission's complaint issuance standard has not been met with respect to the instant charge.

Initially, it is noted that subsection 5.4(a)(2) refers to employer prohibited practices. Respondent's employer, ~~the~~ City of Vineland, is not named a respondent to this matter. Second, under the

^{3/} 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 thereof..."

^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

facts alleged it does not appear that the Respondent union has interfered in the City selection of its labor representatives, in violation of subsection 5.4(b)(2). Third, subsection 5.4(b)(4) prohibits employee representatives from refusing to reduce a negotiated agreement to writing and from refusing to sign an agreement. The factual allegations do not support the Charging Party's claim.

Normally, the claims of unfair representation in negotiations are asserted under subsection 5.4(b)(1). The considerations governing the issuance of a complaint respecting such claims have been discussed in earlier decisions. See In re Township of Springfield, D.U.P. No. 79-13, 5 NJPER 15 (¶ 10008 1978); and, In re Red Bank Board of Education, D.U.P. No. 79-17, 5 NJPER 56 (¶ 10037 1979). In those cases it was determined that unless there are specific factual allegations supportive of a claim that the majority representative has acted in an arbitrary, discriminatory, or bad faith manner, the majority representative's negotiation of contract provisions which provide for different benefits applicable to various unit members is not in itself a violation of the Act.

In Springfield, supra, the undersigned observed:

Disparate treatment of individuals or classes of employees may, of course, involve unfair representation where the conduct of the majority representative is arbitrary, discriminatory or in bad faith. Accordingly, where the allegations of fact in an unfair practice charge allege conduct which would indicate a violation of the majority representative's obligation to render fair representation to unit members, the undersigned shall, in accordance with the Commission's standard for complaint issuance, issue a complaint. However, given the "wide range of reasonableness allowed to a statutory negotiations representative,"

the undersigned must analyze the unfair practice charge to assure that sufficient factual allegations, not conclusionary statements, constitute the basis of the charge. The numerous possibilities for litigation against the majority representative, and in many cases against the employer as well, make such an examination particularly necessary. As stated most succinctly in a Michigan Circuit Court case, *McGrail v. Detroit Federation of Teachers*, 82 LRRM 2623 (1975), the court observed:

The law basically says that the union should have broad discretion in negotiating contracts, weighing advantages and disadvantages or different proposals, and that to allow every dissatisfied person to challenge the validity of certain contracts without showing a strong indication of a breach of the duty to fairly represent, would create havoc in the field of labor law..." [at 2624]

The United States Supreme Court has held:

A wide range of reasonableness must be allowed to a statutory bargaining representative in serving a unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Compromise on a temporary basis, with a view to long range advantages, are natural incidents of negotiations. Differences in wages, hours and conditions of employment reflect countless variables.

Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953).

Consistent with the above, it appears that the factual pleadings of the instant Charge do not describe arbitrary, discriminatory or bad faith conduct by Respondent. The undersigned specifically notes that the alleged failure of Respondent to negotiate a wage that fails to secure a salary for an employee commensurate with the national average would not, standing alone, violate the Act. Further, the Charge does not contain allegations of fact which would support the conclusion that, "...it is blatantly obvious that union negotiators and avid supporters were well taken care of over and above other members."

The Commission's rules state that an unfair practice charge shall contain inter alia:

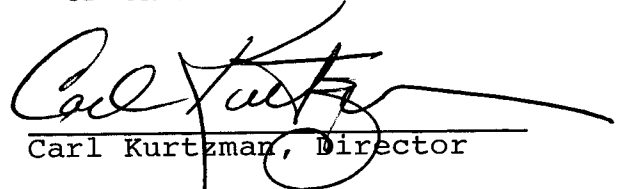
A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated.
(Emphasis added) 6/

Accordingly, it is incumbent upon the Charging Party to allege facts which form the basis of the alleged statutory violation. The undersigned has determined that in the absence of such allegations, a complaint may not issue. 7/

Subsequent to the filing of the Unfair Practice Charge, by letter dated February 2, 1983, the undersigned informed the Charging Party that the Charge could not be processed further unless it was amended to allege facts indicating arbitrary, discriminatory, or bad faith conduct attributable to the majority representative. The undersigned has not received a reply to the February 2, 1983 letter, nor has the Charge been amended, as requested.

Accordingly, for the above reasons, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: May 5, 1983
Trenton, New Jersey

6/ N.J.A.C. 19:141.3
7/ Springfield, supra