D.U.P. NO. 93-13

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

In the Matter of

PLAINFIELD BOARD OF EDUCATION,

Respondent,

-and-

PLAINFIELD ASSOCIATION OF SCHOOL ADMINISTRATORS,

Docket No. CI-92-23
& CI-92-24

Respondent,

-and-

DOROTHY HENRY, et al.

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed by several administrative unit employees against the Plainfield Association of School Administrators (PASA) and the Plainfield Board of Education (Board). The employees alleged that the Association unlawfully negotiated a "discriminatory" salary schedule and sick leave provision in a successor agreement. These acts allegedly violate subsections 5.4(b)(3) and (4) of the Act.

Henry also alleged that the Board interfered with their rights by "alluring" a PASA negotiator in successor negotiations, refusing to sign a memorandum of agreement and failing to negotiate compensation when it assigned additional duties to some unit employees. These acts allegedly violate subsections 5.4(a)(1), (2), (3), (5) and (6) of the Act.

The Director dismissed the charges. He found that no facts indicated that PASA negotiated a "discriminatory" wage increase which caused the charging party economic harm or negotiated in bad faith concerning the "sick leave upon retirement" provision. He also found no facts suggesting that a PASA negotiator's comments during the successor negotiations caused harm to the charging party or violated the duty of fair representation.

He also found that some portions of the charge filed against the Board were not timely filed, and that the charging party did not have standing to process other portions of the charge. Finally, no facts suggest that the Board negotiated in bad faith when it ratified the successor agreement. The charge filed against the Board was dismissed.

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Appearances:

For the Respondent Board of Education,
James P. Granello, attorney

For the Respondent Association,
New Jersey Principals' & Supervisors' Association
(Wayne J. Oppito, attorney)

For the Charging Party,
Vernell Patrick, attorney

REFUSAL TO ISSUE COMPLAINT

On October 24, 1991 and January 29, 1992, Dorothy Henry, Mary Gladden, Vincent Calabrese, Charles Carter, Ben Marrio, Joyce Haynes and Helen Day ("charging party") filed unfair practice charges and amended charges against the Plainfield Association of School Administrators ("PASA") and the Plainfield Board of Education ("Board"). The charging party alleges that on or about July 23, 1991, PASA confirmed that a majority of unit employees had ratified

a successor agreement (covering the period from July 1, 1990 through June 30, 1993) which had a salary schedule which was "disparate, not rationally based and discriminatory, with the largest percentage increases going to non-certificated employees in the office of the business manager." The agreement, finally ratified by the Plainfield Board of Education in September 1991, allegedly had a "discriminatory" salary structure, with increases ranging from "3 per cent to 25.7 per cent." The charging party also alleges that PASA unlawfully negotiated a "payment of sick leave upon retirement" provision which discriminated against two members of the charging party. All these acts allegedly violated subsections 5.4(b)(3) and (4)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On January 29, 1992, the charging party filed an amended charge alleging that PASA negotiator and president Jay Cuff was solicited for the position of high school principal and that it was "suggested that the raise which would occasion his elevation to this position would more than compensate him for the small percentage increase he would receive under the successor agreement." Charging party also alleges that it was denied "effective participation" in

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

negotiations when one of its members (who was part of the Association negotiations team) was not notified of some negotiations team work sessions. These acts allegedly violate subsections 5.4(b)(3) and (4) of the Act.

The charging party also alleges that the Board has not reduced the successor agreement to writing and has not signed any memorandum of agreement concerning the successor agreement. It also alleges that on July 1, 1990, the Board eliminated a department chairman position, assigned the department chair duties to another unit position and failed to negotiate additional compensation for the additional duties. It also alleges that on or about November 29, 1990, the Board assigned additional duties to the then-Director of Adult Education without first negotiating additional compensation for the additional assignments.

On January 29, 1992, the charging party filed an amended charge alleging that the Board interfered with employees' "exercise of guaranteed rights" by "alluring" a PASA negotiator during negotiations. Specifically, the Board allegedly solicited the negotiator for the position of high school principal. Charging party contends that all these actions violate N.J.S.A. 34:13A-1, subsections 5.4(a)(1), (2), (3), (5) and (6).[2/]

2/ These subsections 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

On November 7, 1991 and February 21, 1992, the Board filed responses to the charge and amended charge, asserting that certain allegations are time-barred; that abolishment of job titles is not a negotiable subject; that Cuff was interviewed on July 16, 1991 and the PASA ratification vote of August 9, 1991, was approved 25 to 7 and the Board's act did not affect the negotiations and could not have affected the outcome of the vote; and it denied that it engaged in any unfair practice. The Board also enclosed a signed memorandum of agreement for the administrators' and supervisors' unit dated July 2, 1991 and covering the period from July 1, 1990 to June 30, 1993.

On March 2, 1992, PASA filed a statement of position and numerous documents denying that it engaged in any unfair practice, and asserting facts regarding the conduct of negotiations.

On September 3, 1992, we issued a letter tentatively dismissing the charges. No party responded.

We first consider the charging party's allegations concerning PASA's conduct during negotiations.

2/ 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."

A majority representative's duty of fair representation during negotiations was first discussed by the U.S. Supreme Court in Ford Motor Co. v. Huffman, 345 U.S. 330, 31 LRRM 2548 (1953). The Court recognized the need to allow a bargaining representative a "...wide range of reasonableness..." in negotiating provisions of an agreement. The Court wrote:

> ...Inevitably, differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. 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.
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> (345 U.S. at 338, 31 LRRM at 2551).

The Appellate Division adopted the Ford Motor Co. standard for evaluating the conduct of a majority representative in negotiating agreements in Belen v. Woodbridge Tp. Bd. of Ed., et al., 142 N.J. Super. 486 (App. Div. 1976), certif. den. 72 N.J. 458 (1976).

The charging party's chief allegation is that the negotiated wage increases (varying from 3% to 25.7%) were not "rationally based" and were "discriminatory." In AFT Local 481 (Jackson), P.E.R.C. No. 87-16, 12 NJPER 734 (¶17274 1986), the Commission found that a disparity in negotiated wage increases was not an unfair practice. It relied in part on its previous decision in City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). There, the Commission wrote:

> ...While a breach of the duty does not arise from mere disparities in wage increases or decreases, [citation omitted], a breach does exist when, as here, the exclusive representative makes a deliberate decision in bad faith to cause a unit member economic harm.

Union City, at 8 NJPER 100.

The charging party concedes that it received at least a 3% increase in the successor agreement. No facts have been alleged which suggest that PASA made a "deliberate decision" causing the charging party any "economic harm." Thus, the charging party's characterization of the wage increase as "discriminatory" and not "rationally based" are merely conclusionary statements which do not warrant the issuance of a complaint. Int'l Brotherhood of Electrical Workers (DeSanti), D.U.P. No. 83-11, 9 NJPER 300 (¶14139 1983). Because some unit members did not receive the same percentage increases as other unit employees generally does not appear to be a basis upon which a complaint may issue.

No complaint may issue on the alleged unlawfully negotiated "sick leave upon retirement" provision. That two employees were not able to immediately benefit from the newly negotiated provision, without more, does not indicate a violation of the duty of fair representation, nor does it implicate PASA's "good faith" in those negotiations. No facts have been alleged showing that a contract provision, taking effect about six months after it was negotiated, was a "deliberate decision in bad faith to cause a unit member economic harm."

The charging party also alleges that PASA violated the Act when one of its negotiators (who was also PASA president) was solicited for the position of high school principal and when another negotiator (a member of the charging party) was not notified of negotiations team "work sessions."

There is no dispute that the PASA contract ratification vote was 25-7 in favor of the proposed contract and that the high school principal position is a bargaining unit title. No facts have been alleged which indicate that the position(s) Cuff took on various negotiations proposals caused economic harm to the charging party. Salaries are but one portion of an entire collective negotiations agreement; without more, it is anamolous at best to assume that Cuff, whose title would remain in the unit, would advance proposals which could "harm" the unit. That one member of the charging party was allegedly not notified of several negotiations team work sessions does not, without additional allegations and argument, indicate that PASA acted unlawfully. At worst, this allegation connotes a negligent act, which does not violate a majority representative's duty of fair representation.

The charging party also alleges that PASA misrepresented or inaccurately presented salary guides to the membership in order to secure contract ratification. Generally, an employee organization's internal ratification procedures are not within the Commission's jurisdiction. State Troopers NCO Association, D.U.P. No. 88-7, 14 NJPER 15 (¶19004 1988); Jersey City Education Assn. (McDermott, et

al.), D.U.P. No. 89-10, 15 NJPER 188 (¶20079 1989). The charge does not contain facts indicating that PASA acted arbitrarily or in bad faith in conducting the ratification vote. Even if some misrepresentations had occurred, the harm is de minimis, given the facts that all unit employees received salary increases and none were economically "harmed" by the collective negotiations process. See AFSCME Local 2293, P.E.R.C. No. 82-87, 8 NJPER 223 (¶13092 1982).

The allegations against PASA do not meet the Commission's complaint issuance standard and we dismiss them.[3/]

Our Act requires that an unfair practice charge be filed within six months of the alleged unfair practice unless the charging party was prevented from filing a charge within that time. N.J.S.A. 34:13A-5.4(c). See also Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978).

The charging party alleges that the Board engaged in certain unfair practices on or around July 1, 1990 (paragraph 8 of the charge) and on or around November 29, 1990 (paragraph 10 of the

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3/ Charging party did not allege that PASA violated subsection 5.4(b)(1) of the Act. We assume for purposes of this decision that that subsection was alleged. Charging party alleged a violation of 5.4(b)(3) and (4). The Commission has held that individual employees do not have standing to assert a 5.4(b)(3) violation. Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978); Trenton Bd. of Ed., D.U.P. No. 81-26, 7 NJPER 406 (¶12179 1981). Accordingly, no Complaint and Notice of Hearing shall be issued on the 5.4(b)(3) allegation. The 5.4(b)(4) allegegation is treated below.

charge). These allegations concern events beyond the six-month limitations period. Accordingly, no complaint may issue on these allegations and they are dismissed.

The charging party also alleges that the Board violated the Act on September 17, 1991, when it "executed [the agreement] by a plurality, rather than a majority roll-call vote...." It also alleged that the salary adjustments approved by the Board differed from those approved by PASA on or about July 23, 1991.

These allegations do not violate subsections 5.4(a)(1), (2), (3) or (6). Subsection 5.4(a)(5) provides that an unfair practice arises when an employer fails to negotiate in good faith with the majority representative of employees. An allegation concerning changes in the Board's contract ratification process may be an appropriate concern for the majority representative; however, a change in "committee" or a change from a needed "majority" to a "plurality" vote is not a valid concern to individual employees under this Act. See New Jersey Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Dkt. No. A-1263-80T2 (1981). We have already decided that PASA did not engage in an unfair practice when a proposed memorandum of agreement with "disparate" wage increases was ratified by a 25-7 vote. No facts have been alleged showing that the Board negotiated in bad faith when it ratified that same agreement. Accordingly, we decline to issue a complaint on these portions of the charge.

The charge also alleges that the Board did not reduce the successor agreement to writing or sign a memorandum of agreement, thus violating subsection 5.4(a)(6). But the charge further alleges that the Board engaged in an unfair practice when it and PASA "executed" a successor "collective bargaining agreement." Further, the Board filed a copy of a signed memorandum of agreement on a successor contract. Considering the contradiction in the charging party's allegations and the absence of facts showing that the proferred agreement is not bona fide, we refuse to issue a complaint on this allegation.

The entire charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: October 29, 1992
Trenton, New Jersey