

D.U.P. NO. 95-20

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

In the Matter of

STATE OF NEW JERSEY,
(LAW AND PUBLIC SAFETY),
and COMMUNICATIONS WORKERS OF AMERICA,

Respondents,

-and-

Docket No. CI-94-82

JAMES SCOGNAMIGLIO, et al.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs and the Communications Workers of America engaged in secret negotiations concerning a conversion of classified investigator titles into a generic investigator title and that CWA ignored inquiries about the impact of this title change on employees' rights. As to the charges against the State, the Director found that even assuming a discriminatory effect, there is no allegation of a link between the discrimination and employees' exercise of protected activity, or that the State was motivated by hostility toward any employee's exercise of any protected activity. As to the charges against CWA, the Director found that the charging party alleges no facts showing CWA's conduct was arbitrary, discriminatory or in bad faith. The Director found that all of the allegations, even if proven true, do not rise to the level of a violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

D.U.P. NO. 95-20

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

In the Matter of

STATE OF NEW JERSEY,
(LAW AND PUBLIC SAFETY),
and COMMUNICATIONS WORKERS OF AMERICA,

Respondents,

-and-

Docket No. CI-94-82

JAMES SCOGNAMIGLIO, et al.,

Charging Party.

Appearances:

For the Respondent - State of New Jersey
Governor's Office of Employee Relations
(Philip Whitcomb, Deputy Director)

For the Respondent - CWA
Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

For the Charging Party,
James Scognamiglio, pro se

REFUSAL TO ISSUE COMPLAINT

On June 20, 1994, James Scognamiglio filed an unfair practice charge with the Public Employment Relations Commission against the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs and the Communications Workers of America. The charge alleges that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-5.4(a)(3)^{1/} and that CWA violated subsections 5.4(b)(3) and (5) of the Act.^{2/} when the State and CWA allegedly engaged in secret negotiations concerning a conversion of classified investigator titles into a generic investigator title and when CWA ignored inquiries about the impact of this title change on employees' rights.

Under subsection 5.4(a)(3) of the Act, employers may not discriminate in regard to...any term or condition of employment to ...discourage employees in the exercise of protected rights. Those rights are the right to form, join or assist in the administration of an employee organization and the right to present grievances. Scognamiglio alleges no facts showing that the State's actions are discriminatory toward any employee or group of employees. His statement that "the implementation of this plan acts to the prejudice of and discriminates against a large number of career professionals...in regard to tenure, promotion, seniority and bumping rights". Assuming a discriminatory effect, there is no

1/ This subsection prohibits public employers, their representatives or agents from: "(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."

2/ 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; and, (5) Violating any of the rules and regulations established by the commission."

allegation of a link between the discrimination and employees' exercise of protected activity, or that the State was motivated by hostility toward any employee's exercise of any protected activity. Bridgewater Township v. Bridgewater Public Works Association, 95 N.J. 235 (1984). Based upon the lack of factual allegations supporting this part of the charge, I will not issue a complaint as to the allegations against the State.^{3/}

Scognamiglio alleged a violation of 5.4(b)(3). Subsection 5.4(b)(3) prohibits a majority representative from refusing to negotiate in good faith with a public employer. This duty of good faith negotiations flows to the public employer rather than to individual unit members. 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); Plainfield Bd. of Ed., D.U.P. No. 93-13, 18 NJPER 507 (¶23235 1992). Accordingly, no Complaint shall be issued on the 5.4(b)(3) allegation against CWA.

Scognamiglio also alleges that CWA failed to negotiate in the "best interests" of the investigators.^{4/} The basis for this

3/ Further, At the time the charge was filed, the title changes had not been implemented and thus, the charge appears to be premature. See Rutgers, the State University, D.U.P. No. 94-29, 20 NJPER 161 (¶25073 1994).

4/ Scognamiglio did not allege that CWA violated subsection 5.4(b)(1) of the Act. We assume for purposes of this decision that that subsection was alleged.

part of the charge appears to be both the substance of what was discussed in the secret negotiations and the fact that CWA did not respond to inquiries about the negotiations. Generally, negotiations are not conducted in a public forum. The Act does not impose on majority representatives the obligation to reveal all or any of the substance of negotiations during their occurrence. 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.

(345 U.S. at 338, 31 LRRM at 2551).

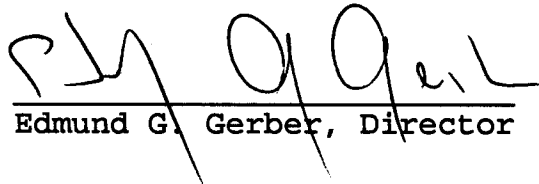
See Belen v. Woodbridge Tp. Bd. of Ed., et al., 142 N.J. Super. 486 (App. Div. 1976), certif. den. 72 N.J. 458 (1976).

Giving the charge its most favorable reading, Scognamiglio allegations, even if proven true, do not rise to the level of a violation of subsection 5.4(b)(1). The duty of fair representation does not require a majority representative to negotiate "in the best interests" of its members. A breach of the duty occurs only when a union's conduct toward a unit employee is arbitrary, discriminatory

or in bad faith. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967). Here, charging party alleges no facts showing CWA's conduct was arbitrary, discriminatory or in bad faith.

The Commission's complaint issuance standard has not been met. N.J.A.C. 19:14-2.1. Accordingly, the charge is dismissed. N.J.A.C. 19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 30, 1994
Trenton, New Jersey