

D.U.P. NO. 95-17

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

In the Matter of

S.E.I.U., LOCAL 74,

Respondent,

-and-

Docket No. CI-94-38

PATRICIA FREEMAN, PATRICIA GARLAND
AND DIANE SMITH,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed against a majority representative for allegedly failing to call a ratification meeting on a tentative collective agreement. The omission allegedly violates the union's duty of fair representation (subsection 5.4(b)(1) of the Act).

Following the Commission remand of this matter, P.E.R.C. No. 94-117, 20 NJPER 275 (¶15139 1994), the Director determined that the factual allegations did not warrant the issuance of a Complaint. The Director found that the allegations did not adequately suggest that the majority representative's "actions surrounding ratification" were arbitrary, discriminatory or in bad faith.

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Appearances:

For the Respondent,
Manning, Raab, Dealy & Strum, attorneys
(Ira A. Strum, of counsel)

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

REFUSAL TO ISSUE COMPLAINT

On December 23, 1993, Patricia Freeman, Patricia Garland and Diane Smith filed an unfair practice charge against their majority representative, SEIU Local 455/74, alleging that it violated subsections 5.4(b)(1), (3) and (5)^{1/} of the New Jersey

^{1/} 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."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. These employees allege that, in general, the union failed to call a necessary ratification meeting on a tentative collective agreement reached with the employer, the Old Bridge Board of Education. A portion of this charge alleges:

Based on information and belief, for a contract proposal negotiated with the Old Bridge Board of Education to be ratified it would be necessary for the proposal to be presented at a meeting of the union membership and voted favorably upon. As the attached certifications make clear, this was never done (my emphasis). Allegedly a meeting to ratify was supposedly held on June 22, 1993, but a survey of all affected members of the union has revealed that no such meeting ever took place with the possible exception of one school (my emphasis).

The certifications all state that charging parties were "never permitted to vote on the agreement nor [were they] advised of the meeting."

On April 13, 1994, I issued a decision, D.U.P. No. 94-39, 20 NJPER 213 (¶25104 1994), dismissing the charge. In particular, I wrote that the charging parties had, "prior to the ratification vote, [] withdrawn from Local 455/74" and "since they were no longer members of Local 455/74, they had no inherent right to participate in the ratification vote."

On June 30, 1994, the Commission remanded the case to the Director, P.E.R.C. No. 94-117, 20 NJPER 275 (¶15139 1994), for reconsideration in light of the fact that charging parties' resignations were effective July 1, 1993, about one week after the ratification vote disputably occurred.

On November 7, 1994, I issued a letter tentatively dismissing the charge. No response was filed.

The factual allegations do not warrant the issuance of a complaint. The charging parties first allege that no ratification meeting was conducted and then concede that it may have occurred in "one school." No facts indicate that more than one union ratification meeting was necessary. Second, it does not necessarily follow from the alleged fact that the charging parties were "never permitted to vote, nor advised of the meeting", that the meeting did not occur, which again, is a primary allegation of the charge. Consequently, the attached certifications do not clarify (as opposed to substantiate) whether a ratification meeting did not occur or if attendees at the meeting were arbitrarily selected, etc.^{2/}

Such an allegation is necessary because the Commission addressed the duty of fair representation issue raised by the charge. It wrote:

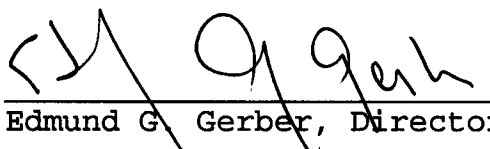
Nothing in the Act requires a union to submit a contract to its membership for ratification. But if ratification is otherwise required by agreement with the employer or by the union's own procedures, a union may breach its duty of fair representation if its actions surrounding ratification are arbitrary, discriminatory or in bad faith. Cf. Camden Cty. College Faculty Ass'n, D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987); Newark Building Trades Council, D.U.P. No. 82-34, 8 NJPER 333 (¶13151 1982). [Id. at 275].

^{2/} If the charging parties were "never advised of the meeting", it is unlikely that they were physically turned away from it (one meaning of "never permitted to vote").

The disputed agreement has a provision requiring ratification by both parties. The charging parties have not contested that notices for a ratification meeting were posted. What is unclear are the factual allegations concerning SEIU's "actions surrounding ratification."

Accordingly, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge.^{3/} The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 7, 1994
Trenton, New Jersey

^{3/} N.J.A.C. 19:14-2.3.