

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

In the Matter of

SOUTH PLAINFIELD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CE-93-18

SOUTH PLAINFIELD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the South Plainfield Board of Education against the South Plainfield Education Association. The charge alleges that the Association sought to interfere with the composition of the Board's negotiations committee by engaging in a campaign to unseat a board member because of his position and viewpoints expressed in negotiations. The charge also alleges that the Association improperly accessed school mailbox communications facilities.

The Director finds that the Association had the right to comment on the Board member's views on the Association and to circulate its comments to colleagues. As to the allegation involving improperly accessed mail boxes, the Director finds, and the Board acknowledges, that this amounts to a breach of contract. Accordingly, the Director dismisses this allegation under Human Services.

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Appearances:

For the Respondent,  
Michael Parise, NJEA UniServ Representative

For the Charging Party,  
Schwartz, Simon & Edelstein, attorneys  
(Lawrence S. Schwartz, of counsel)

REFUSAL TO ISSUE COMPLAINT

On June 17, 1993, the South Plainfield Board of Education filed an unfair practice charge against the South Plainfield Education Association alleging that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically subsections 5.4(b)(2) and (3)<sup>1/</sup> by engaging in tactics destructive of the negotiations process and violative of the

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<sup>1/</sup> 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. (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."

requirement under the Act that an employee representative negotiate in good faith.

Specifically, the Board claims that the Association sought to interfere with the composition of the Board's negotiations committee by engaging in a campaign to unseat a board member because of his position and viewpoints expressed in negotiations. Moreover, the Board alleges that the Association improperly accessed school mailbox communications facilities to advance a political agenda against the Board and the above-referenced board member with the intent to exact bargaining concessions. The Board asserts that the Association's improper access of school mailboxes is also a violation of Article V, paragraph F of the parties' collective bargaining agreement.

The Board's allegations fail to meet the Commission's complaint issuance standard and I refuse to issue a complaint with respect to the instant charge.

The Association allegedly circulated an article by a Board member who was up for re-election. The article was in part critical of the Association. Below the article, the Association wrote comments which read:

Colleague,

Clearly, this man's "interests" are not compatible with ours.

Tuesday's election will determine if his views are to be a majority.

Let's stand together and stand united in the way that counts - at the ballot box.

The comments were signed "Yours in unity" by the President, first Vice-President, second Vice-President and another member of the Association.

In Op. of West Windsor v. PERC, 78 N.J. 98, 111-112 (1978), the New Jersey Supreme Court carefully examined the right of public employees to engage in the political process:

[Public Employees] possess rights not only as public employees but also as citizens of this State. Under N.J. Const. (1947), Art. I, para. 18, they, like all other citizens, possess the right to petition the government for the "redress of grievances." Public employees, of course, possess the right to seek to influence governmental decision-making to the same extent and through the same means as all other citizens -- through the customary political channels and through the public input provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Moreover, as an authoritative commentator in this area has observed:

\*\*\*[P]ublic employees, even without collective bargaining, can and normally do participate in determining the terms and conditions of employment. Many can vote and all can support candidates, organize pressure groups, and present arguments in the public forum. Because their terms and conditions of employment are decided through the political process, they have the right as citizens to participate in the decisions which effect their employment. Such a right is not enjoyed by employees in the private sector.\*\*\*

Summers, "Public Employee Bargaining: A Political Persepctive," 83 Yale L.J. 1156, 1160 (1974) (emphasis supplied, footnote omitted)]

And the United States Supreme Court has recently noted:

Through exercise of their political influence as part of the electorate, [public] employees have the opportunity to affect the decisions of

government representatives who sit on the other side of the bargaining table.

[Abood v. Detroit Bd. of Ed., 431 U.S. 200, 228, 97 S. Ct. 1782, 1796, 52 L. Ed. 2d 261 (1977)].

The Supreme Court has held that public employees do not give up their rights as citizens by virtue of their public employment. City of Madison Joint School District v. Wisconsin Employment Relations Commission, 429 U.S. 167, 97 S. Ct. 421, 50 L. Ed. 376 (principle of exclusive representation cannot constitutionally bar a public employee who, like any other citizen, might wish to express his view about governmental decisions concerning labor relations); see also Abood, supra, 421 U.S. at 230, 97 S. Ct. at 1797 ("public employees are free to participate in the full range of political activity open to other citizens").

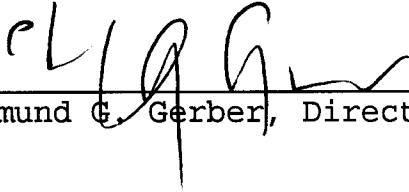
See also In re Laurel Springs Bd. of Ed., P.E.R.C. No. 78-4, 3 NJPER 228 (1977); Brick Township Education Association, D.U.P. No. 86-5, 12 NJPER 134 (¶17051 1986).

Thus, the Association had the right to comment on the Board member's views on the Association and to circulate its comments to colleagues. West Windsor; Brick.

As to the allegation that the Association improperly accessed mail boxes, the Board acknowledges that this amounts to a violation of the parties' agreement. In State of New Jersey, Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that allegations setting forth a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction. Here, the Board is merely asserting a breach of the parties' agreement and, under Human Services, this cannot amount to an unfair practice under the Act. See also, City of Brigantine, P.E.R.C. No. 92-123, 18 NJPER 357 (¶23154 1992).

Therefore, I find that the Commission's complaint issuance standard has not been met and the charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Edmund G. Gerber, Director

DATED: July 16, 1993  
Trenton, New Jersey