

D.U.P. NO. 89-13

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

In the Matter of

SHREWSBURY BOROUGH BOARD OF EDUCATION  
& SHREWSBURY BOROUGH TEACHERS' ASSOCIATION,

Respondents,

-and-

Docket No. CI-89-48

BARBARA FERMAGLICH, KATHLEEN YOUNG,  
ANTONIA GIALLOURAKIS & PEGGY BUSCH,

Petitioners.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint where the charging parties failed to establish a breach of the duty of fair representation. The Director determined that the Association, in agreeing to a successor agreement salary guide, exercised its discretion within the wide range of reasonableness permitted in negotiations.

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Appearances:

For the Respondent Board of Education  
Atkinson, DeBartolo & Menna, Esqs.  
(Bunce D. Atkinson, of counsel)

For the Respondent Teachers' Association  
Klausner, Hunter & Oxfeld, Esqs.  
(Stephen B. Hunter, of counsel)

For the Petitioners  
Barbara Fermaglich

REFUSAL TO ISSUE COMPLAINT

On December 13, 1988, Barbara Fermaglich, Kathleen Young, Antonia Giallourakis and Peggy Busch ("Charging Parties") filed Unfair Practice Charges against the Shrewsbury Borough Board of Education ("Board") and the Shrewsbury Borough Teachers Association ("Association") alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"),

specifically subsections 5.4(a)(1) and (3)<sup>1/</sup> and 5.4(b)(1)<sup>2/</sup> respectively.

The charging parties contend that the Board and the Association violated the Act by agreeing to a successor agreement which allegedly placed the charging parties on incorrect steps on the salary guide. It is undisputed that the charging parties are lower on the guide than other teachers in the district with fewer years of experience. It appears that some less experienced teachers are higher on the salary guide than charging parties because when the less experienced teachers were hired, the Board placed them on the guide based upon consideration of their prior experience but without regard to a prior compression of the Shrewsbury salary guide. The charging parties argue that the Association breached its duty of fair representation by failing to remedy the guide inequity in the last round of negotiations. A Board proposal to "correct" the guide within the negotiated budget percentage increase limitations of 8 1/2, 9 and 9 was rejected by the Association.

In addition, the charging parties contend that the negotiated guide was unfair because (1) it took experience into consideration for guide placement for only certain teachers; (2)

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1/ These subsections prohibit public employers, 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) 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/ This subsection prohibits 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."

certain teachers were "bumped" up steps on the guide for no apparent reason, and (3) the money saved by "freezing" certain teachers on the guide to make up for the alleged compression inequity was distributed to all bargaining unit members rather than just to the "disadvantaged" charging parties. Further, the charging parties argue that the Association breached its representation duty by (1) forcing the membership to vote on only the salary guide page of the successor agreement and not the entire contract; (2) denying a proper request for a special membership meeting to discuss the guide "problem" and (3) ignoring a petition signed by more than half the teachers in the district stating that they'd be willing to receive less money next year in order to help the charging parties attain proper guide placement.

The Board denies violating the Act. While it acknowledges that some less experienced teachers are placed higher on the guide than the charging parties, it maintains that the charging parties are not incorrectly placed. The Board contends that it acted properly by negotiating an agreement with the designated majority representative of its employees and by implementing a duly ratified agreement.

The Association also denies violating the Act. It argues that it negotiated in good faith a contract which was in the best interests of all bargaining unit members. The Association maintains that the charging parties' unhappiness with their guide placement and the distribution of monies does not give rise to a breach of the duty of fair representation, particularly where, as here, the charging parties did receive a salary increase. The Association

also denies it refused to call a special meeting when so requested by the charging parties.

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 charged.<sup>3/</sup> The Commission has delegated its authority to issue complaints to the Director and has established a standard upon which an unfair practice complaint may be issued. The 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.<sup>4/</sup> The Commission's rules provide that the Director may decline to issue a complaint.<sup>5/</sup>

In Ford Motor Co. v. Huffman, 346 U.S. 330, 338 (1953), the United States Supreme Court set forth the standard for the duty of fair representation in negotiations as follows:

Inevitably differences arise in the manner and degree to which the terms of any negotiated

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<sup>3/</sup> 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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

<sup>4/</sup> N.J.A.C. 19:14-2.1.

<sup>5/</sup> N.J.A.C. 19:14-2.3.

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 a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

(emphasis supplied)

See also Humphrey v. Moore, 375 U.S. 335 (1984). Absent clear evidence of bad faith or fraud, unions may make compromises which adversely affect some members of a negotiations unit, while resulting in greater benefits for other members. The fact that a negotiated agreement results in a detriment to one group of employees does not establish a breach of the duty of fair representation. Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super 486 (App. Div. 1976); Essex Cty Vo-Tech Bd. of Ed. and Admin. and Supv. Assn., P.E.R.C. No. 89-6, 14 NJPER 508 (¶19214 1988); Lawrence Tp. PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15073 1983); Union City and F.M.B.A. Local 12, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982); Hamilton Tp. Ed. Assn., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978).

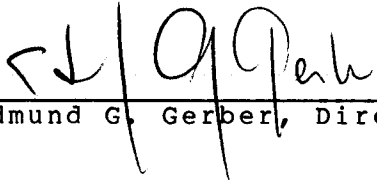
In the instant case, even assuming all of the allegations made by the charging parties are true, we find that the Association did not breach its duty of fair representation. In agreeing to the salary guide contained in the successor agreement, the Association exercised its discretion within the wide range of reasonableness permitted in negotiations. There is no indication that the charging parties were deliberately singled out for unfair or disparate treatment. In fact (and although not controlling here), the

Association did address the guide compression problem and the charging parties did receive a raise during the period in question. Moreover, the charge is devoid of any allegations of intentional bad faith or fraud. The mere fact that the charging parties were dissatisfied with their comparative guide placement negotiated by the Association (and ratified by the entire bargaining unit) does not establish a breach of the duty of fair representation. Belen.

Similarly, the charging parties have alleged no facts to sustain a charge against the Board. We find nothing in the charge to indicate that the Board did anything other than what it was supposed to do, i.e., negotiate with the designated majority representative of its employees. There are no allegations of fraud, collusion or arbitrary behavior on the part of the Board. Thus, in negotiating with the Association and reaching a successor agreement, the Board did not violate the Act.

Accordingly, we find that the Commission's complaint issuance standard has not been met and decline to issue a complaint on the allegations of this charge.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Edmund G. Gerber, Director

DATED: March 31, 1989  
Trenton, New Jersey