

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

In the Matter of

WEST WINDSOR-PLAINSBORO
EDUCATION ASSOCIATION,

Respondent,

-and-

DOCKET NO. CI-80-20

GEORGIA LEE JOHNSON, et al.,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the Association unfairly represented senior members of the negotiations unit by negotiating salary increases that favored less senior members. The Director, referring to the previous determination In re Township of Springfield, D.U.P. No. 79-13, 5 NJPER 15 (¶ 10008 1978), observes that an Unfair Practice Charge alleging unfair representation must contain sufficient factual allegations in support of the claim that the representative's actions have been arbitrary, discriminatory, or in bad faith. The Director also notes that the negotiation of contract provisions providing for different benefits or disparate treatment of various unit members is not a per se violation of the Act. The Director concludes that the factual pleadings contained in the Charge do not describe arbitrary, discriminatory, or bad faith conduct by the representative.

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Appearances:

For the Respondent
Ruhlman & Butrym, attorneys
(Richard Friedman of counsel)

For the Charging Parties
Selecky, LaRosee & Rowe, attorneys
(David R. LaRosee of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 16, 1980, by Georgia Lee Johnson, et al. (the "Charging Parties") against the West Windsor-Plainsboro Education Association (the "Association") alleging that the Association was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"),

specifically, N.J.S.A. 34:13A-5.4(b)(1). ^{1/} The Charging Parties allege that the Association has violated the Act by negotiating disproportionate salary increases that discriminated against the more senior members of the bargaining unit and favored less senior unit members. It is claimed that this disparate treatment constitutes a failure to fairly represent senior members.

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 charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the

^{1/} This subsection prohibits employee organizations, their representatives from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act." Charging Parties claim that the unfair practice has arisen from a violation of N.J.S.A. 34:13A-5.3, which provides: "A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership."

^{2/} 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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof ... "

charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission's rules also provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below, the undersigned determines that the Commission's complaint issuance standards have not been met.

The Charging parties state that the Association violated the Act by negotiating larger salary increases for the less senior members of the unit which thereby discriminated against the more senior members. It is also claimed that a majority of the Association's negotiations team was comprised of less senior staff members who would benefit by the negotiated result.

The considerations governing the issuance of a complaint herein were discussed in the undersigned's earlier decisions in In re Tp. of Springfield, D.U.P. No. 79-13, 5 NJPER 15 (¶ 10008 1978); and, In re Red Bank Bd. of Ed., D.U.P. No. 79-17, 5 NJPER 56 (¶ 10037 1979). In those cases the undersigned held that absent facts indicating arbitrary, discriminatory, or bad faith conduct by an employee representative, the negotiation of a contract provision by such a representative which provides for different benefits or disparate treatment of various unit members is not a per se violation of the Act. See Belen, et al. v. Woodbridge Bd. of Ed. & Woodbridge Fed. of Teachers Loc. 882, AFT, AFL-CIO, 142 N.J. Super. 486 (1976), certif. den., 72 N.J. 458 (1976), wherein the court, citing several United States Supreme Court decisions, found that

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

a majority representative must be allowed a wide range of reasonableness to fulfill its responsibilities as a negotiations representative for a unit of employees.

In Springfield, supra, the undersigned observed:

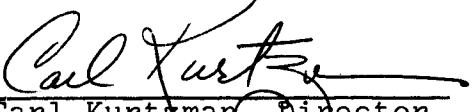
Disparate treatment of individuals or classes of employees may, of course, involve unfair representation where the conduct of the majority representative is arbitrary, discriminatory or in bad faith. Accordingly, where the allegations of fact in an unfair practice charge allege conduct which would indicate a violation of the majority representative's obligation to render fair representation to unit members, the undersigned shall, in accordance with the Commission's standard for complaint issuance, issue a complaint. However, given the "wide range of reasonableness allowed to a statutory negotiations representative," 5/ the undersigned must analyze the unfair practice charge to assure that sufficient factual allegations, not conclusionary statements, constitute the basis of the charge. The numerous possibilities for litigation against the majority representative, and in many cases against the employer as well, make such an examination particularly necessary. As stated most succinctly in a Michigan Circuit Court case, McGrail v. Detroit Federation of Teachers, 82 LRRM 2628 (1975), the court observed,

The law basically says that the union should have broad discretion in negotiating contracts, weighing advantages and that to allow every dissatisfied person to challenge the validity of certain contracts without showing a strong indication of a breach of the duty to fairly represent, would create havoc in the field of labor law ... " [at 2624]

5/ Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953)

Consistent with the above, it appears that the factual pleadings of the instant Charge do not describe arbitrary, discriminatory or bad faith conduct by the Association. Accordingly, the allegations of the instant Charge, if true, may not constitute a violation of the Act and the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: April 1, 1980
Trenton, New Jersey