

D.U.P. NO. 2017-3

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

In the Matter of

AFSCME COUNCIL 52, LOCAL 2274,

Respondent,

-and-

Docket No. CE-2016-007

TOWNSHIP OF WAYNE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging the American Federation of State, County, and Municipal Employees, Council 52, Local 2274 (AFSCME) violated section 5.4b(2) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Township of Wayne (Township) alleged AFSCME violated the Act by sending a letter to the Township Council's president during collective negotiations requesting to meet with the Township Council to discuss contract negotiations. The Township contended this communication should not have been sent to the Township Council because the Township's Mayor had designated the Township's Business Administrator and Human Resources director as the Township's negotiations representatives and the Township Council was not authorized to participate in collective negotiations. The Director disagreed and found AFSCME's communication was protected activity under the Act that outweighed the Township's interest in having communications sent through their Business Administrator. The facts indicated the parties were able reach an agreement through their negotiations representatives and that AFSCME did not meet with or insist on negotiating with the Council and thus did not engage in conduct that rose to the level of a "coercive pattern of conduct" under the standards for 5.4b(2) violations. See Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (P17002 1985).

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Appearances:

For the Respondent,  
(Seth Gollin, Staff Representative)

For the Charging Party,  
Cleary, Jacobbe, Alfieri, Jacobs, LLC, attorneys  
(Matthew J. Jacobbe, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On October 7, 2015, the Township of Wayne (Township) filed an unfair practice charge against the American Federation of State, County and Municipal Employees, Council 52, Local 2274 (AFSCME). The charge alleges AFSCME violated section 5.4b(2) and (3)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act (Act),

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1/ These provisions 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; and (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit (continued...)"

N.J.S.A. 34:13A-1 et seq., by sending a letter to the Township Council's President requesting a meeting with the Township Council to discuss collective negotiations. The Township alleges that, prior to sending the letter, the Township's Business Administrator advised AFSCME that such a meeting would be "inappropriate" and that "negotiations would be handled by Township Administration."

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

On September 28, 2016, I issued a letter to the parties tentatively dismissing the charge and inviting responses. No responses were filed.

I find the following facts.

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1/ (...continued)  
concerning terms and conditions of employment of employees in that unit."

AFSCME is the exclusive majority representative of non-supervisory, blue collar employees of the Township. The Township and AFSCME are parties to a collective negotiations agreement (CNA) extending from January 1, 2015 through December 31, 2018. The parties' previous CNA expired on December 31, 2014.

According to the charge, the Township is organized under the Mayor-Council Plan F of the Optional Municipal Charter Law; N.J.S.A. 40:69A-1 et seq. In this form of municipal government, the charge states, the Township's Mayor is "statutorily responsible for all personnel matters, including but not limited to the negotiations of all collective negotiations agreements." The charge also alleges that the Township Council is not authorized to participate in collective negotiations.

On or about August 19, 2014, the parties commenced collective negotiations for the 2015-2018 CNA. Mayor Christopher P. Vergano designated Neal Bellet, the Township's Business Administrator, and Michael DelBalso, the Township's Human Resources Director, as the Township's representatives in negotiations. AFSCME's negotiations representatives were Michael Riga, AFSCME's Corresponding Secretary, and Richard Albolino, AFSCME's President.

The negotiations representatives for the Township and AFSCME participated in five collective negotiations sessions on August

19, 2014; February 6 and 25, 2015; March 17, 2015; and September 9, 2015. Each negotiations session lasted approximately one to two hours.<sup>2/</sup> During the course of negotiations, AFSCME requested to meet with the Township Council and communicated that request to Bellet. Bellet advised AFSCME that meeting with the Council would be "inappropriate" and informed AFSCME that "negotiations would be handled by Township Administration."

Unable to reach an agreement through collective negotiations, AFSCME filed a Notice of Impasse with the Public Employment Relations Commission (Commission) on September 18, 2015 (Dkt. No. I-2016-043). In the Notice of Impasse, AFSCME identified Bellet as the Township's representative in impasse proceedings, and made no reference to the Township Council.

After filing for impasse, Riga sent a letter on behalf of AFSCME, dated September 21, 2015, to Township Council President Al Sadowski. The letter requests an "opportunity to meet with yourself and any other interested council member to discuss our contract negotiations." The Township Council, Bellet and DelBalso were copied on the letter. There are no facts indicating that a meeting took place between any Council member and any AFSCME representative.

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<sup>2/</sup> The number and duration of negotiations sessions are set forth in the Notice of Impasse filed by AFSCME with the Commission on September 18, 2015.

On December 3, 2015, the parties' negotiations representatives participated in a mediation session conducted by a Commission mediator. After that session, the Township and AFSCME entered into a Memorandum of Agreement (MOA). On or about March 11, 2016, Mayor Vergano, Albolino and AFSCME Staff Representative Seth Gollin signed the 2015-2018 CNA.

#### ANALYSIS

The Township asserts that AFSCME circumvented the Township's designated negotiations representatives by sending the September 21<sup>st</sup> letter to the Township Council requesting an opportunity to meet and discuss contract negotiations. In so doing, the Township contends, AFSCME violated sections 5.4b(2) and (3) of the Act. I disagree and dismiss the charge.

New Jersey public employees enjoy the constitutional right, in their capacity as citizens, to communicate with government officials about matters of public concern. Windsor Tp. v. PERC, 78 N.J., 111 (1978); City of Hackensack, P.E.R.C. No. 78-71, 4 NJPER 190 (¶4096 1978), aff'd NJPER Supp.2d 58 (¶39 App. Div. 1979); Hunterdon Cty., D.U.P. No. 85-7, 10 NJPER 544 (¶15253 1984) (fn. 5); City of Englewood, D.U.P. No. 2003-8, 29 NJPER 41 (¶15 2003). As the New Jersey Supreme Court explained in Windsor Tp.:

[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.

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Public 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 affect their employment.* Such a right is not enjoyed by employees in the private sector.

[78 N.J. at 111-112][italics in original].

The presentation of a position by a public employee to an elected official concerning terms and conditions of employment is "indisputably a protected activity" under the Act. Hackensack, 4 NJPER at 191; East Windsor Bd. of Ed., D.U.P. No. 81-7, 6 NJPER 521 (¶11265 1980). The statutory and constitutional right of public employees to communicate with government officials is "not abridged by [the] existence of rights and responsibilities under the Act." Hunterdon Cty., 10 NJPER at 544 (fn. 5).

While a public employee may communicate with governmental officials about terms and conditions of employment, he or she cannot, through their majority representative, engage in a coercive pattern of conduct designed to interfere with the employer's right to choose a representative for purposes of collective negotiations. N.J.S.A. 34:13A-5.4b(2); Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985). In Downe Tp. Bd. of Ed., the Commission interpreted and applied subsection 5.4b(2) for the first time. The Commission discussed several decisions by the National Labor Relations Board (NLRB) as examples of a "coercive pattern of conduct" under subsection 5.4b(2), including:

- (1) Union obtains discharge of employer representative through picketing, threats of strike and violence, and by directing members not to fill out questionnaires the employer needed to obtain financing;
- (2) Union threatens to make negotiations difficult unless employer discharged a foreman;
- (3) Union strikes and refuses to bargain until employer left a multi-employer bargaining association;
- (4) Union organizes work stoppage to force demotion of employer's grievance representative; and



(5) Union repeatedly demands the discharge of employer's service manager; after manager is discharged, union lessens negotiations demands and agrees to negotiate past a strike deadline.

[Downe Tp. Bd. of Ed., 12 NJPER at 6]

Based on its analysis of NLRB precedent, the Commission found in Downe that the union's conduct during negotiations in sending a letter to the board of education's president requesting the board member's presence at negotiations was not a violation of subsection 5.4b(2), even though the board president was not the employer's negotiations representative. 12 NJPER at 7.

Consistent with Downe, the Commission has repeatedly held that a written communication about terms and conditions of employment by a majority representative or public employee to a government official during collective negotiations is not, by itself, a violation of subsection 5.4b(2) even when that communication is directed to an official who is not the employer's designated negotiations representative. City of Hackensack, 4 NJPER at 191; East Windsor Bd. of Ed., 6 NJPER at 521-522. Absent factual allegations that the majority representative attempted to prevent the employer's negotiations representative from fulfilling his or her negotiations responsibilities, we have found no violation of subsection

5.4b(2) under these circumstances since the official who receives a letter concerning negotiations may simply turn it over to the appropriate government official and decline to respond. Id. The burden on the employer to re-direct a communication about negotiations to their negotiations representative is minimal and does not outweigh the public employee's protected right to present a position to the governing body that determines his or her terms and conditions of employment. City of Hackensack; see also City of Englewood, 29 NJPER at 43 (Director finds union's letters to the city's council instead of negotiations representative requesting dialogue with the council over staffing issues were not a violation of Act since the union was not demanding negotiations with the council but was merely asking for a discussion which the council could decline to have).

Here, I find AFSCME's September 21 letter to Council President Sadowski was protected activity that did not interfere with the Township's selection of a collective negotiations representative. The Township does not allege facts indicating AFSCME prevented or interfered with Bellet and DelBalso's ability to represent the Township in collective negotiations, nor does the Township allege that AFSCME insisted on negotiating with the Council. On the contrary, AFSCME participated in five negotiations sessions and a mediation session with Bellet and

DelBalso and the parties were able to settle on a collective negotiations agreement through their designated negotiations representatives. Moreover, AFSCME did not attempt to exclude DelBalso or Bellet from their requested discussion with the Council, since both representatives were copied on the letter to Sadowski. AFSCME itself designated Bellet as the Township's representative in impasse proceedings in its Notice of Impasse. The mere fact that AFSCME attempted to open up a dialogue with Township Council members about the state of collective negotiations does not, by itself, constitute a violation of 5.4b(2). Downe Tp. Bd. of Ed.; City of Hackensack; East Windsor Bd. of Ed. While the charge does not specify how Sadowsky responded to the September 21 letter, no facts indicate that he was prevented from turning the letter over to Bellet or DelBlaso and declining AFSCME's invitation for a meeting.

I also dismiss the Township' 5.4b(3) claim. Section 5.4b(3) of the Act requires a majority representative to negotiate in good faith with a public employer concerning terms and conditions of employment. N.J.S.A. 34:13A-5.4b(3); Rutgers University, D.U.P. No. 2016-5, 43 NJPER 15 (¶5 2016); aff'd P.E.R.C. No. 2017-4, 43 NJPER 71 (¶18 2016). To establish a 5.4b(3) violation, the employer must demonstrate that the majority representative, by its action, adversely impacted negotiations or

was an impediment to reaching an agreement. Rutgers, P.E.R.C. No. 2017-4, Slip Op. at p. 4; citing UMDNJ, H.E. 2009-3, 34 NJPER 319 (¶116 2008), adopted in pt. P.E.R.C. No. 2010-12, 35 NJPER 330 (¶113 2009). No facts in this charge indicate that AFSCME adversely impacted collective negotiations or that its conduct was an impediment to an agreement. I therefore dismiss the Township's 5.4b(3) claim.

Accordingly, I find the Commission's complaint issuance standard has not been met with respect to the Township's 5.4(b) (2) and (3) allegations.<sup>3/</sup>

ORDER

The unfair practice charge is dismissed.

Very truly yours,

/s/Gayl R. Mazuco, Esq.  
Director of Unfair Practices

Date: October 7, 2016  
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.**

**Any appeal is due by October 24, 2016.**

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<sup>3/</sup> N.J.A.C. 19:14-2.3.