

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-83-239

JERSEY CITY EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to the Association's charge that the dissemination of certain negotiations status information by Board personnel to unit members was inflammatory, prejudicial and intended to undermine the Association's leadership. The Administrator determines that the factual allegations do not allege with sufficient specificity facts which are supportive of the conclusionary assertions raised by the Charging Party.

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Appearances:

For the Respondent  
Richard C. Vaughan, attorney

For the Charging Party  
Philip Feintuch, attorney

REFUSAL TO ISSUE COMPLAINT

On March 28, 1983, the Jersey City Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Jersey City Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically §§ 5.4(a)(1), (2), (5), (6) and (7) <sup>1/</sup> when it

<sup>1/</sup> N.J.S.A. 34:13A-5.4(a) prohibits 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

unilaterally circulated to its school principals certain information concerning allegedly proposed teacher salary guides.

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. <sup>2/</sup> 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, if true, may constitute an unfair practice within the meaning of the Act. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

The allegations of the Charging Party are as follows:

On or about March 9, 1983 the Jersey City Board of Education by its agent, its attorney, Richard C. Vaughan, released to the members of the School District or certain of them information which was not agreed to by the charging party and which purported to be Teacher Salary Guides that were not accepted by the Jersey City

<sup>2/</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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

<sup>3/</sup> N.J.A.C. 19:14-2.1

<sup>4/</sup> N.J.A.C. 19:14-2.3 .

Education Association. The purpose of the release of this information was to undermine and raise doubts in the minds of the membership of the Jersey City Education Association as to the leadership of that organization. Certain of the members released this highly inflammatory and prejudicial information to the teachers, which is interpreted by the Association as being interference with the administration of the Jersey City Education Association. Additionally, the Jersey City Education Association interprets the actions of certain of the members as an attempt to coerce their subordinates (teachers) into accepting the Boards proposals. Additionally, all of the above is interpreted by the Association as a refusal to negotiate with the duly authorized representatives of the Jersey City Education Association and an attempt to directly negotiate with the membership at large.

Separate and apart from the above it is alleged that alternatively with this charge that on or about February 15, 1983 an agreement was entered into between the parties and the Board of Education has failed, refused and neglected to ratify such an agreement.

For the reasons stated below it appears to the undersigned that the Commission's complaint issuance standards have not been met.

The Commission's rules state that an unfair practice charge shall contain inter alia:

A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representative by whom committed and a statement of the portion or portions of the Act alleged to have been violated. (Emphasis added) 5/

Although the Association contends that the salary guide information, which was circulated while negotiations were in progress, was "inflammatory," "prejudicial" and intended to "undermine and raise doubts in the minds of the [Association's membership] as to the leadership of that organization," it has not submitted factual allegations to support these conclusionary statements which suggest unfair practices.


In matters involving allegations that a party's negotiations approach has been in bad faith, the Commission has declined to base its judgment upon the occurrence of isolated events and has instead focused upon the "totality of conduct" engaged in by a respondent. This standard was approved in State of New Jersey v. Council of N.J. State College Locals, NJSFT, AFT, AFL-CIO, 141 N.J. Super. 470 (App. Div. 1976). <sup>6/</sup> In the instant case, the Association's factual statement fails to allege with sufficient specificity what "information" was "released" to employees of the Board, which District "members" circulated the "information," the manner of its dissemination, the timing of its dissemination and the context of its dissemination. Accordingly, there is insufficient factual material presented to support a claim of a §(a)(5)

<sup>6/</sup> Labor law decisions in the private sector endorse the "totality of conduct" approach in matters relating to the dissemination of materials relating to negotiations positions. General Electric Co., 150 NLRB 192, 57 LRRM 1491 (1964); Proctor and Gamble Mfg. Co., 160 NLRB 334, 62 LRRM 1617 (1966).

violation. 7/ Similarly, there is insufficient factual material presented to support a claim of a §(a)(1), (2), (6) or (7) violation. 8/

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR  
OF UNFAIR PRACTICE PROCEEDINGS

  
Joel G. Scharff, Administrator

DATED: December 20, 1983  
Trenton, New Jersey

7/ In correspondence dated November 7, 1983, the Charging Party's attorney provided the Commission's assigned staff agent with a copy of a Board memorandum which it asserts "precipitated the filing of the charge." The memorandum, dated March 9, 1983, from the Board Superintendent to all principals attached a status report on negotiations which had embodied the proposed teachers negotiations settlement submitted to the Board for ratification. The attached status report was a report prepared by Richard Vaughan, Esq. and was addressed to Board members, the School Superintendent and the Board Secretary. It contains the following statement: "There is a difference separating our positions on the calculations concerning the salary guides." (Additional statements describe each party's position as to salary guides)

Although the above material provided to the Commission has not formally been made part of the charge, and is not therefore material which the undersigned has considered for the purposes for the instant complaint issuance determination, there is nothing in the memoranda which is an apparent untruth as to the representation of the dispute concerning salary guide structure.

8/ With regard to the § (a)(7) allegation, the Association has not identified the rules and regulations established by the Commission of which the City is in alleged violation. Accordingly, the facts alleged by the Association, if true, do not support a claim of a § (a)(7) violation. See In re Madison Tp. Bd. of Ed., E.D. No. 76-8 (1975). With regard to the alleged § (a)(6) violation the undersigned notes that this allegation has been litigated before the Commission in a separate unfair practice proceeding and is the subject of a recent decision, In re Jersey City Bd. of Ed., P.E.R.C. No. 84-64, NJPER (¶ \_\_\_\_\_ 1983).