

D.U.P. NO. 92-16

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

In the Matter of

West Milford Bus Drivers Association

Respondent,

-and-

Docket No. CE-92-13

West Milford Board of Education

Charging Party.

SYNOPSIS

The Director of Unfair Practices finds that the Association's distribution of a leaflet opposing subcontracting does not constitute an unfair practice. The Director finds that the leaflet merely expresses the Association's views on the issue of subcontracting bus services. The Director also finds that the Association's distribution of board members' unlisted telephone numbers does not constitute an unfair practice.

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Appearances:

For the Respondent,
Clare Hermann, President

For the Charging Party,
William F. Koy, Esq.

REFUSAL TO ISSUE COMPLAINT

On March 12, 1992, the West Milford Board of Education ("Board") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the West Milford Bus Drivers Association ("Association"). The Board filed an amended unfair practice charge against the Association on March 30, 1992. The charges allege that the Association violated subsections 5.4(b)(1), (2) and (5)^{1/} of the New Jersey Employer-Employee

^{1/} These subsections prohibit 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. (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. (5) Violating any of the rules and regulations established by the commission."

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")^{2/} by distributing a leaflet opposing a Board proposal to subcontract for bus drivers.

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.^{3/} The Commission has delegated its authority to issue complaints to me 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.^{4/} The Commission's rules provide that I may decline to issue a complaint.^{5/}

The Association's leaflet states that: " The West Milford School Board is currently considering replacing its school bus

^{2/} The initial charge alleges violations of subsections 5.4 (b)(1), (2) and (5) and the amended charge alleges violations of subsections 5.4 (b)(1) and (2) only.

^{3/} 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...."

^{4/} N.J.A.C. 19:14-2.1.

^{5/} N.J.A.C. 19:14-2.3.

drivers with subcontracted services." The leaflet then lists disadvantages to subcontracting. It urges recipients to: "Call your school board members, come to announced meetings, ask questions, and demand clear answers!". The leaflet also lists the names and phone numbers of school board members.

The Board alleges that the leaflet interferes with the right to manage the district by: "... initiating employee strife which has produced economic and public waste...". The Board states that the Association's position statements against subcontracting "... may compromise the objectivity and intent of the best interests of the citizens of the township." The Board also alleges that the Association has invaded the privacy of Board members by listing their phone numbers in the leaflet.

In its amended charge, the Board alleges that the Association invaded Board members' privacy by including their unlisted phone numbers in its flier. The amendment also alleges that the unlisted numbers were improperly obtained by the Association.

The Act guarantees the Association's right to publicly express its views about labor relations. Manalapan-Englishtown Reg. Bd. of Ed., P.E.R.C. No. 78-91, 4 NJPER 262 (¶4134 1978); Laurel Springs Bd. of Ed., P.E.R.C. No. 78-4, 3 NJPER 228 (1977); Jackson Tp., H.E. No. 88-49, 14 NJPER 293 (¶19109 1988) adopted P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988). See Emarco, Inc., 284 NLRB No. 91, 125 LRRM 1311, 1313 (1987). In Laurel Springs, the Commission

held that, "it is the intent of the Act to protect public employees in their proper activities in support of their majority representative. This includes activities to inform the public of their view of a particular dispute or issue as well as their activities at the negotiating table." 3 NJPER at 229 (emphasis supplied).^{6/} Thus, the Association was entitled to express its views over the potential subcontracting.^{7/}

The Board also objects to the Association's distribution of board members' unlisted phone numbers and alleges that those numbers were improperly obtained by the Association.^{8/} However, the Board has not shown how the distribution of the telephone numbers interfered with, restrained or coerced employees in the exercise of their rights under the Act^{9/} or that the Association's actions

^{6/} Bolstering the Act's protection of public expression of labor relations matters is a long line of cases protecting public employees' constitutional right of free speech. Czurlanis v. Albanese, 721 F.2d 98 (3d Cir. 1983); Gasparinetti v. Kerr, 568 F.2d 311 (3d Cir. 1977), cert. den. 436 U.S. 903 (1978); Salerno v. O'Rourke, 555 F.Supp. 750 (D.C.N.J. 1983); Williams v. Civil Service Comm'n, 66 N.J. 152 (1974); Hall v. Pennsauken Tp., 176 N.J. Super. 229 (App. Div. 1980); Ramirez v. Hudson Cty., 167 N.J. Super. 435 (1979).

^{7/} Although the Board alleges that the Association's conduct violated subsections (b)(1), (2) and (5) of the Act, there were no facts alleged in the charge which would constitute a violation of those subsections.

^{8/} If the Association violated Board guidelines or procedures in obtaining the phone numbers, the disciplinary process might be the forum to address those concerns.

^{9/} N.J.S.A. 34:13A-5.4 (b)(1).

interfered with the Board's selection of its representative for the purposes of negotiations or grievance adjustment.^{10/}

Based upon the foregoing, I do not believe that the Commission's complaint issuance standard has been met and I will not issue a complaint on the allegations of this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber
Director of Unfair Practices

DATED: April 15, 1992
Trenton, New Jersey