

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

In the Matter of

TOWNSHIP OF SPRINGFIELD &
SPRINGFIELD MUNICIPAL EMPLOYEES
ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-78-8

PHYLLIS BROWER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the employer and the employee representative discriminated against the Charging Party and that the employer had failed to adopt a salary ordinance commensurate with the requirements of a collective negotiations agreement. The Charging Party alleged that all employees included in the representative's collective negotiations unit, except herself, received salary increases. The Director notes the absence of any allegation that the Charging Party was engaged in any activities protected under the Act. The Director further notes that the disparate salary treatment of individuals under collective negotiations agreements does not, in itself, constitute unfair representation attributable to an employee representative. The Director further notes the absence of any allegation that the employee representative held any animus toward the Charging Party. Lastly, the Director observes that the Charging Party has instituted a contract enforcement action in Superior Court with respect to her claim that the collective negotiations agreement is being violated. The Director determines that the Superior Court action is the appropriate forum to resolve the Charging Party's contract breach claim and, therefore, declines to issue an unfair practice complaint with respect to the claim that the contract breach constitutes an unfair practice.

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Appearances:

For the Respondent/Township
Seidel & Stauber, Esqs.
(Alan W. Stauber, of Counsel)

For the Respondent/Employee Organization
Simone & Schwartz, Esqs.
(Howard Schwartz, of Counsel)

For the Charging Party,
Morley, Cramer, Tansey, Haggerty & Fanning, Esqs.
(Edward J. Fanning, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on August 10, 1977 by Phylliss Brower (the "Charging Party") against the Township of Springfield (the "Township") and the Springfield Municipal Employees Association (the "Association") alleging that the Township and Association have engaged in unfair

practices under the New Jersey Employer-Employee Relations Act, as amended (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) 1/ and (b)(1) and (3), respectively. 2/

The Charging Party alleges that she was not properly notified by the Association of her inclusion in the negotiations unit represented by the Association. She further alleges that the Association has not fairly represented her interests and that the Township has failed to provide her with a salary increase commensurate with the requirements of the contractual agreement between the Association and the Township. At the conclusion of Charging Party's Statement of Charge these allegations are summarized:

Ms. Brower asserts that the Township of Springfield acted wrongfully in enacting a salary ordinance contrary

1/ These subsections prohibit employers, their representatives and 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. (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."

2/ 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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

to the terms of the collective bargaining agreement.

Ms. Brower also asserts that the Township of Springfield and Springfield Municipal Employees Association wrongfully discriminated against her by enacting salary increases for all employees except herself.

Ms. Brower also asserts that the Springfield Municipal Employees Association violated its duty to her by not fairly representing her collective bargaining interests with the Township, failing to bargain with the Township in good faith, and failing to notify Ms. Brower that she was a member of the bargain [sic] unit and that the Township of Springfield was negotiating on her behalf.

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. ^{3/} 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 charging party, if true, may constitute an unfair practice within

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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

the meaning of the Act: ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

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

The undersigned shall first address the charges filed against the Township, and thereafter, shall address the charges filed against the Association.

Although the Charging Party alleges that the Township has discriminated against her "by enacting salary increases for all employees except herself," Charging Party fails to assert that she was engaged in any activities protected by the Act. Thus, while the undersigned accepts, for the purposes of this determination, the truth of the factual assertion that only the Charging Party did not receive a salary increase, §§ 5.4(a)(1) and (3) only prohibit employer interference, restraint and coercion, and discrimination, as to employees "in the exercise of the rights guaranteed to them by this Act." Accordingly, Charging Party has failed to allege a factual predicate which would be necessary to support an unfair practice complaint under §§ 5.4(a)(1) or (3). See, In re Borough of Palisades Park, D.U.P. No. 78-1, 2 NJPER 238 (1977); In re Borough of Avalon, D.U.P. No. 78-13, 4 NJPER ___ (1978).

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

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

Charging Party's § 5.4(a)(5) claim against the Township is based upon a claimed violation of the collective negotiations agreement. ^{6/} In essence, Charging Party is requesting that the Commission enforce the collective negotiations agreement between the Township and the Association. However, as noted in In re Borough of Palisades Park, supra, at n.8, "The Commission does not view its role as the enforcer of collective negotiations agreements. Such a matter is appropriately the concern of an arbitrator, or alternatively the courts upon a suit for contract enforcement."

The undersigned observes that the contract between the Township and the Association, in effect at the time the aggrieved conduct arose, provides for binding arbitration of grievances, and at Section 3.03(D) appears to provide that any party, including an aggrieved individual, may request arbitration. The Charging Party has also advised the Commission that she has initiated a complaint in Superior Court seeking enforcement of the collective negotiations agreement. In footnote 10 of the Palisades Park matter, supra, the undersigned noted: "Given the preference of the Commission not to act as the enforcer of contracts, and the universally accepted principle that binding arbitration mechanisms or suits for contract enforcement are the appropriate means to resolve allegations

^{6/} As more fully described in Borough of Palisades Park, supra, at n.8, the basis for the application of § 5.4(a)(5) to contractual violations is that the contract breach may also constitute a prohibited unilateral change of terms and conditions of employment without prior negotiations with the majority representative of employees.

of contract violation, the undersigned notes that the Charging Party's Superior Court complaint, and not the invocation of the unfair practice provisions of the Act, is the preferred method of obtaining the relief which Charging Party requests." Accordingly, given the Charging Party's pursuit of a Superior Court complaint seeking contract enforcement and the appropriateness of that forum for the resolution of contract breach claims, the undersigned declines to issue a complaint herein relative to this § 5.4(a)(5) allegation.

Regarding the Charging Party's allegation against the Association, Charging Party initially alleges that the Association committed an unfair practice by its failure to notify the Charging Party that she was a member of the negotiations unit. More specifically, Charging Party states that she "never received notification that a municipal employees association existed, and this association purported to represent her collective bargaining rights with the Township or that she was considered to be a member of the collective bargaining unit." Charging Party states that the Association was "created" on or about May 1976 and that the Association and the Township entered into their collective negotiations agreement on or about August 10, 1976. The instant Unfair Practice Charge was filed August 10, 1977, exactly one year after this latter date.

N.J.S.A. 34:13A-5.4(c) provides that "no complaint shall issue based upon any unfair practice occurring more than six months

prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer so prevented." The unfair practice claim relating to the Charging Party's inclusion in the negotiations unit relates to the unit recognition which occurred in late spring or summer 1976. Charging Party has not alleged circumstances under which the Unfair Practice Charge relating to this issue can be considered. ^{7/}

Lastly, the Charging Party alleges that the Association violated its duty to fairly represent her collective negotiations interests and by failing to negotiate with the Township in good faith. Likewise, the Charging Party claims that the Association and the Township have wrongfully discriminated against her by the enactment of salary increases for all employees except herself. The Charging Party alleges that the Association is in violation of §§ 5.4(b)(1) and (3). A violation of a majority representative's duty of fair representation to employees within its negotiations unit is cognizable under § 5.4(b)(1). ^{8/}

^{7/} If, in fact, a "failure to notify" constitutes a violation of a recognized representative's duties toward a unit member, an essential element concerning the timeliness of a charge would be the date of the individual's knowledge of the existence of the negotiations unit. Charging Party fails to allege this requisite lack of knowledge or the date she became aware of the existence of a negotiations unit.

^{8/} Whether an individual may allege a violation of § 5.4(b)(3) is questionable. Cf In re Hamilton Township Board of Education, H.E. No. 79-10, 4 NJPER 381, (74171 1978), at n.1. Regardless of whether a § 5.4(b)(3) claim may be asserted by the Charging Party herein, the issue of fair representation may be addressed in the context of a § 5.4(b)(1) allegation.

Preliminarily, the undersigned observes the absence of an allegation that the Association's conduct was motivated by any animus toward her. Nor is it alleged that the Association has failed to present a grievance on the Charging Party's behalf with regard to the claim of the denial of contractual benefits. Rather, it appears that the Charging Party's allegations of unfair representation by the Association are directed toward the negotiation of a contract which provides that all unit members, except the Charging Party, shall receive salary increases. This disparate treatment is claimed to constitute discrimination.

Although arising in the context of a majority representative's statutory obligations with regard to grievance/arbitration processing, the most frequently cited case concerning the statutory duty of fair representation is Vaca v. Sipes, 386 U.S. 171 (1967). In Vaca, the U. S. Supreme Court held that "A breach of the statutory duty of fair representation occurs when a union's conduct toward a member of the unit is arbitrary, discriminatory or in bad faith." [at 190]. The Appellate Division of the Superior Court has analyzed a majority representative's duty to provide fair representation to unit members in the context of contract negotiations, Belen, et al. v. Woodbridge Board of Education and Woodbridge Federation of Teachers Local 822, AFT, AFL-CIO, 142 N.J. Super. 486 (1976), certif den., 72 N.J. 458 (1976). In Belen, six school psychologists who were members of a negotiations unit which included all board professional, non-supervisory personnel claimed that the Federation failed to

fulfill its duty of representing plaintiffs fairly and without discrimination. The Federation and the Board had agreed to contract provisions which resulted in reduced salary and increased working hours for the psychologists. The court cited Vaca, supra, with approval and stated, "Thus, the mere fact that a negotiated agreement results, as it did here, in a detriment to one group of employees does not establish a breach of duty by the union." [142 N.J. Super at 491] The court also cited Ford Motor Company v. Huffman, 345 U.S. 330 (1953) which states, in relevant part,

... Inevitably, differences arise in the manner and degree to which the terms of any negotiated 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 to a statutory bargaining representative in serving a unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Compromises on a temporary basis, with a view to long range advantages, are natural incidents of negotiations. Differences in wages, hours and conditions of employment reflect countless variables. [at 338]

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," 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 2625 (1975), the court observed,

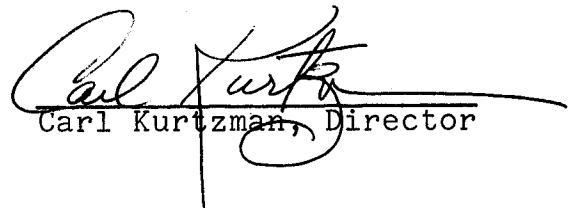
The law basically says that the union should have broad discretion in negotiating contracts, weighing advantages and disadvantages of different proposals, and that to allow every dissatisfied person to challenge the validity of certain contracts without showing a strong indication of a breach of the duty to fairly represent, would create havoc in the field of labor law ... " [at 2623]

The undersigned is convinced, having carefully examined the allegations of the Charging Party, that facts indicating arbitrary, discriminatory or bad faith conduct are not alleged. Accordingly, for reasons discussed above, the undersigned has determined, in the context of the allegations of the Charge presented herein, that the negotiation or maintenance of a contract

provision resulting in the enactment of a salary ordinance providing for disparate treatment of various unit members, per se, does not constitute unfair representation attributable to the majority representative.

Accordingly, the undersigned declines to issue a complaint in the instant Unfair Practice Charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: December 19, 1978
Trenton, New Jersey