

D.U.P. NO. 2020-5

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

In the Matter of

ACADEMY URBAN LEADERSHIP
EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CE-2018-005

ACADEMY URBAN LEADERSHIP
CHARTER SCHOOL,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Academy for Urban Leadership (Charging Party) against the Academy Urban Leadership Education Association (Respondent). The charge alleges that the Respondent violated section 5.4b(2), (3), and (5) of the New Jersey Employer-Employee Relations Act (Act) when one of its negotiations representatives, UniServ Field Representative Brian Furry, filed a Notice of Impasse with the Commission thirteen workdays after submitting Respondent's initial proposals, attempted to misrepresent its counter-proposals and responses, engaged in hostile and belligerent behavior and used racially offensive language, particularly towards Hispanic members of the Charging Party's negotiations team. The Director finds that the allegedly unlawful conduct committed by the Respondent's representative occurred during one negotiations session and that there were no facts indicating that the representative engaged in a coercive pattern of conduct designed to interfere with the Charging Party's choice of its negotiations representative. The Director finds that the Respondent did not breach its duty to negotiate in good faith because Respondent continued to negotiate after filing for Impasse, and the charge did not identify any specific facts supporting its claim that it attempted to conceal its counter-proposals and responses. The Director also finds that Uniserv Representative Furry's hostile and racially offensive conduct at one negotiations session does not rise to the level of bad faith negotiations. The Director further finds that the charge does not cite the specific rule or regulation allegedly violated, which is necessary to establish a Section 5.4b(5) claim.

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Appearances:

For the Respondent,
Oxfeld Cohen, attorneys
(Gail Oxfeld Kanef, of counsel)

For the Charging Party,
Genova Burns, LLC, attorneys
(Nicholas J. Repici, of counsel)

REFUSAL TO ISSUE COMPLAINT

One October 3, 2017, the Academy Urban Leadership Charter School (Charging Party) filed an unfair practice charge against the Academy Urban Leadership Education Association (Association). The charge alleges that the Association violated section 5.4b (2), (3), and (5)^{1/} of the New Jersey Employer-

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; (3) Refusing to negotiate in good faith with a public employer, if they are the majority (continued...)"

Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when one of its negotiations representatives filed a Notice of Impasse with the Commission thirteen workdays after submitting its initial proposals, attempted to misrepresent its counter-proposals and responses, engaged in hostile and belligerent behavior and used racially offensive language, particularly targeting Hispanic members of the Charging Party's negotiations team.

The Commission has authority to issue a complaint where it appears that the 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.

I find the following facts.

The Charging Party is a public charter school located in Perth Amboy, New Jersey. Since June 1, 2016, the Association has been the exclusive majority representative of all regularly employed non-supervisory certificated employees of the Charging

1/ (...continued)
representative of employees in employment of employees an appropriate unit concerning terms and conditions of employment of employees in that unit; (5) Violating any of the rules and regulations established by the commission."

Party. The parties are negotiating their first collective negotiations agreement.

The Association submitted its initial proposals, consisting of 66 pages, in October, 2016. According to the charge, thirteen workdays later, on October 24, 2016, and before a single negotiations session was held, the Association filed a Notice of Impasse with the Commission.

The parties conducted their first negotiations session on or around January 26, 2017. The Charging Party provided its response and counter-proposals, comprising 77 pages. It also had converted Respondent's proposals from a PDF file to a Word document to track changes and proposals more efficiently.

On May 9, 2017, in advance of the parties' scheduled May 18, 2017 negotiations session, UniServ Field Representative Brian Furry emailed the Association's counter-proposals and response, comprising 62 pages. Without providing any specifics, the Charging Party claims that in reviewing UniServ Representative Furry's May 9 communication at the May 18 negotiations session, it became apparent that he had misrepresented the Association's responses and counter-proposals in an effort to conceal the Association's proposals and responses. Charging Party proceeded to discuss with UniServ Representative Furry his attempted concealment. The charge does not identify specifically who on the Charging Party's negotiations committee addressed UniServ

Representative Furry or what was said to him. The charge alleges that UniServ Representative Furry became defensive and hostile in response, particularly towards the Hispanic members of the Charging Party's negotiations team. It claims that he referred to those members using derogatory and ethnically offensive language. UniServ Representative Furry allegedly taunted and invited a physical altercation with Lead Person Dr. Nestor Collazo, one of the Charging Party's negotiations representatives. In a loud and demeaning tone, UniServ Representative Furry repeatedly referred to Dr. Collazo as "boy" and referenced Dr. Collazo's father "your dad, the Major Leaguer."^{2/} As a result of UniServ Representative's Furry's conduct, the session ended. As UniServ Representative Furry left the room, he yelled "boy" repeatedly. Since this incident, Lead Person Dr. Collazo has not returned to the parties' subsequent negotiations sessions.

ANALYSIS

The Charging Party asserts that UniServ Representative Furry's conduct violated Section 5.4b(2), (3) and (5) of the Act. I find that none of the allegations meet the complaint issuance standard.

^{2/} Dr. Collazo is an Afro-Puerto Rican man in his sixties. His father, Carlos Bernier, was the first person-of-color to play for the Pittsburgh Pirates Major League Baseball franchise.

Section 5.4b(2) of the Act is violated when a union representative or agent engages 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, 7 (¶17002 1985) (concluding union did not unlawfully interfere with school board's right to choose its negotiations representative by stating that board should not be represented by the superintendent and a principal since they evaluate teachers who were members of the union's negotiations team). In Downe Tp. Bd of Ed., the Commission discussed examples of union actions that were found to constitute a "coercive pattern of conduct" under a similar provision in the National Labor Relations Act, such as union threats to make negotiations difficult unless an employer discharged a foreman, and organized work stoppages to force the demotion of an employer's grievance representative. Id., 12 NJPER at 6.

In this case, the allegedly unlawful conduct of UniServ Representative Furry occurred during one negotiations session. Although Lead Person Dr. Collazo did not remain on the Charging Party's negotiations team as a result of UniServ Representative Furry's hostile and racially offensive behavior, such an effect does not satisfy the complaint issuance standard absent accompanying factual allegations indicating that UniServ

Representative Furry engaged in a coercive pattern of conduct designed to interfere with the Charging Party's choice of Dr. Collazo as its representative. The charge alleges no facts indicating that UniServ Representative Furry or any other Association representative insisted or even requested that Lead Person Dr. Collazo be discharged, demoted, or otherwise excluded from the Charging Party's negotiations team. Also, no facts indicate that Association representatives engaged in similar racial harassment previously, or threatened any other type of reprisal if Dr. Collazo returned to the negotiations team. Therefore, this claim does not satisfy the complaint issuance standard.

To establish that a majority representative failed to negotiate in good faith as required under Section 5.4b(3) of the Act, the Commission examines the totality of its conduct. Hazlet Tp. Bd. of Ed., P.E.R.C. No. 80-57, 5 NJPER 498 (¶10254 1979). Although UniServ Representative Furry filed a Notice of Impasse shortly after the Association made its initial 66 page proposal, the Association continued to meet and to respond to the Charging Party's counter-proposals. The charge's allegation that UniServ Representative Furry attempted to conceal the Associations's counter-proposals and responses to the Charging Party's proposals is conclusory and does not identify any specific facts supporting that claim. To the extent that UniServ Representative Furry's

hostile and racially offensive conduct at the May 18, 2017 negotiations session can be viewed as a effectively ending the meeting prematurely, this solitary occurrence does not rise to the level of bad faith negotiations. I also find that this claim does not meet the complaint issuance standard.

Section 5.4b(5) of the Act makes it an unfair practice for an employee organization to violate the Commission's rules and regulations. To satisfy the complaint issuance standard, the charge must cite a specific rule or regulation allegedly violated by a respondent. IBEW Local 164, D.U.P. No. 98-37, 24 NJPER 395 (¶29180 1998). The charge does not provide the required citation, and accordingly fails to meet the complaint issuance standard.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: September 10, 2019
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 September 20, 2019.