

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

In the Matter of

BRICK TOWNSHIP EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CE-85-24

BRICK TOWNSHIP BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices has refused to issue a complaint in this matter. The Brick Township Board of Education alleged that the Brick Township Teacher's Association questioned the Board of Education candidates concerning their positions on issues relating to negotiations.

It was held that public employees have a right to engage in political activity, and therefore, the alleged actions could not constitute an unfair practice.

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Appearances:

For the Charging Party,  
Anton & Sendzik, Esqs.  
(Jay C. Sendzik of counsel)

For the Respondent,  
Klausner & Hunter, Esqs.  
(Stephen B. Hunter of counsel)

REFUSAL TO ISSUE COMPLAINT

On June 17, 1985, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by the Brick Township Board of Education ("Board") alleging that the Brick Township Education Association engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act,

N.J.S.A. 34:13A-1 et seq. ("Act"), specifically, §§5.4(b)(2), (3) and (5). 1/

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.2/ 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 a charging party, if true, may constitute an unfair practice within the meaning of the Act. 3/

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

2/ 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...

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

The Commission's rules provide that I may decline to issue a complaint.<sup>4/</sup>

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

The Board's Charge alleges that the Association's Political Action Committee invited candidates running for re-election on the Board of Education to Association meetings. At these meetings, candidates were questioned by the Political Action Committee concerning their positions on certain issues relating to negotiations. Further, the Board alleges that the Association's actions interfered with and coerced the public employer in the selection of its representative for the purpose of collective negotiations.

The New Jersey Supreme Court has carefully examined the right of public employees to engage in the political process. Top. of West Windsor v. PERC, 78 N.J. 98, 111, 112 (1978).

[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

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

-- through the customary political channels and through the public input provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Moreover, as an authoritative commentator in this area has observed:

\*\*\*[P]ublic 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 effect their employment. Such a right is not enjoyed by employees in the private sector.\*\*\*

Summers, "Public Employee Bargaining: A Political Perspective," 83 Yale L.J. 1156, 1160 (1974) (emphasis supplied, footnote omitted)]

And the United States Supreme Court has recently noted:

Through exercise of their political influence as part of the electorate, [public] employees have the opportunity to affect the decisions of government representatives who sit on the other side of the bargaining table.

[Aboud v. Detroit Bd. of Ed., 431 U.S. 200, 228, 97 S. Ct. 1782, 1796, 52 L. Ed. 2d 261 (1977)].

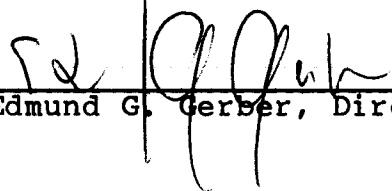
The Supreme Court has held that public employees do not give up their rights as citizens by virtue of their public employment. City of Madison Joint School District v. Wisconsin Employment Relations Commission, 429 U.S. 167, 97 S. Ct. 421, 50 L. Ed. 376 (principle of exclusive representation cannot constitutionally bar a public employee who, like any other citizen, might wish to express his view about governmental decisions concerning labor relations); see also Aboud, supra, 421 U.S. at 230, 97 S. Ct. at 1797 ("public employees are free to participate in the full range of political activity open to other citizens").

See also In re Laurel Springs Bd. of Ed., P.E.R.C. No. 78-4, 4 NJPER 190 (1978), aff'd App. Div. Dkt. No. A-3562-77 (1979). In re Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (1982), aff'd App. Div. Dkt. No. A-1642-8212 (1983).

Thus, the notion that it is somehow not permissible for an organization to question political candidates as to their views on issues of interest to the organization, including a candidate's view on negotiations or even terms or conditions of employment, is not tenable.

Even assuming the accuracy of the facts as set forth in the Charge, I find no basis upon which an unfair practice may be found. Therefore, I decline to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: January 14, 1986  
Trenton, New Jersey