

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-80-25

ANTOINETTE BASKERVILLE,

Charging Party.

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NEWARK TEACHERS UNION,

Respondent,

-and-

DOCKET NO. CI-80-26

ANTOINETTE BASKERVILLE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge filed by an individual member of the negotiations unit who claimed that the union's exclusive access to certain bulletin boards and school communication facilities interfered with practiced rights under the Act. The Director notes a previous Commission decision upholding the validity of contractual provisions providing for such exclusive access to majority representatives and further finds, in conformance with National Labor Relations Board precedent that an individual member of a negotiations unit does not have a statutorily protected right of access to such exclusive communications facilities.

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Appearances:

For the Respondent Board  
Marvin W. Wyche, Jr.

For the Respondent Employee Representative  
Pietro M. Petino

For the Charging Party  
Denise Reinhardt, Esq.

REFUSAL TO ISSUE COMPLAINT

Unfair Practice Charges were filed with the Public Employment Relations Commission (the "Commission") on February 8, 1980 by Antoinette Baskerville (the "Charging Party") against the Newark Board of Education (the "Board") and the Newark Teachers Union (the "NTU") alleging that the respondent Board was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act,

N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1) 1/ and that the respondent NTU was engaging in unfair practices in violation of N.J.S.A. 34:13A-5.4(b)(1). 2/ 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 the meaning of the Act. 4/ The Commission's rules provide that the undersigned may decline to issue a complaint. 5/

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- 1/ N.J.S.A. 34:13A-5.4(a)(1) prohibits employers, their representatives and agents from: "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."
- 2/ N.J.S.A. 34:13A-5.4(b)(1) prohibits employee organizations, their representatives and agents from: "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."
- 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..."
- 4/ N.J.A.C. 19:14-2.1
- 5/ N.J.A.C. 19:14-2.3

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

The charge against the Board (CI-80-25) alleges that the Newark Board has maintained and enforced in its agreement with the Newark Teachers Union certain clauses which interfere with, restrain, or coerce employees in the exercise of the rights guaranteed to them by the Act. The clauses in question provide that: "The Board shall maintain a separate bulletin board... for the exclusive use of the Union..." and, "the Union shall have the right to place material dealing with proper and legitimate union business in employee's mailboxes." 6/ The charge refers to a letter from the Executive Superintendent of the Board to the President of the NTU which states that school administrators will be directed to enforce these contractual terms, and only elected unions have the right to post or distribute information of concern to the membership via the bulletin boards or mailboxes.

6/ Article IV, Sections 3 and 7 of the Agreement provide:

Section 3. Bulletin Boards

"The Board shall provide a separate bulletin board or a separate section of a larger bulletin board of adequate size, but not less than nine (9) square feet, for the exclusive use of the Union in an easily visible position in the main office of every school building or some other location by mutual agreement if office space is inadequate. The Union agrees that it will at no time use such space for posting any materials that are unethical, unprofessional, or violative of law."

Section 7. Distribution of Literature

"The Union shall have the right to place material dealing with proper and legitimate Union business in the employee's mailboxes."

The charge against the NTU (Docket No. CI-80-26) alleges that the NTU, through its agents, has maintained and enforced Sections 3 and 7 of Article IV of the Agreement, footnote 6 below, by requiring that only NTU representatives may post notices or distribute literature in employee mailboxes and any other material will be removed.

Initially, the undersigned notes that the charges do not allege that the charging party attempted to use union bulletin boards and was denied access to these facilities by either the Board or the NTU. <sup>7/</sup> Accordingly, it appears to the undersigned that the charging party is requesting an advisory opinion from the Commission regarding the validity of the contractual provisions in question and notices issued by the NTU and the Board regarding the enforcement of said provisions. The Commission's policy is not to issue advisory opinions in unfair practice matters.

Nevertheless, the undersigned shall analyze the issues presented herein since the Commission has previously addressed the issue of exclusive access to communications facilities accorded to majority representatives.

In Union Co. Regional Board of Ed. et al. PERC No. 76-17, 2 NJPER 50 (1976), the Commission upheld the validity of contractual provisions which extend to the majority representative exclusive access to bulletin boards and other communication facilities. Although the charging party herein is an individual member of a faction within

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<sup>7/</sup> Although an opportunity has been provided, the charging party has not amended the charge to allege such conduct.

the NTU and not a minority employee representative, as were the charging parties in the Union County Regional matter, supra, the Commission's determination is equally applicable in both instances.

Additionally, the National Labor Relations Board has recently decided a matter of substantial similarity to the issues raised herein. Teamsters Local 515, 248 NLRB No. 20 (1980). 8/ The Board therein found that the Union did not commit an unfair practice when it removed material posted on the exclusive union bulletin board by a union member who was a member of a dissident group of teamsters. The contract in that case also provided that the union bulletin board was for the sole use of the union for official union business. From this decision it would appear that the NLRB has concluded, and the undersigned concurs, that official union agents may prevent unit members from utilizing exclusively designated union communications facilities for unauthorized union purposes. Additionally, from the above decision, the undersigned would conclude, similarly, that there is no statutory right under the New Jersey Employer-Employee Relations Act protecting an individual's use of facilities designated for exclusive use by the majority representative. 9/

Accordingly, it does not appear to the undersigned that the

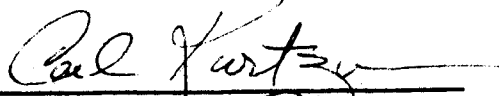
8/ See Lullo v. Internat'l Assn. of Fire Fighters, 55 N.J. 409 (1970) wherein the N.J. Supreme Court stated that the Commission should utilize NLRB decisions and policies as a guide in its own decisions.

See also Galloway Twp. Bd/Ed v. Galloway Tp. Assn. of Ed. Secretaries 78 N.J. 1 (1978).

9/ The undersigned has previously advised the charging party of the applicability of the two decisions discussed above to the instant matter, and the charging party has been afforded an opportunity to submit a brief distinguishing the applicability of the aforementioned decisions. The charging party has not filed any additional materials.

allegations of the charge, if true, constitute unfair practices by either the Board or the NTU, The undersigned therefore declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Carl Kurtzman, Director

DATED: July 31, 1980  
Trenton, New Jersey