

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

In the Matter of

UNION COUNTY REGIONAL HIGH  
SCHOOL BOARD OF EDUCATION,

Respondent,

-and-

UNION COUNTY REGIONAL HIGH  
SCHOOL TEACHERS ASSOCIATION AND  
THE SECRETARIES AND CLERKS  
ASSOCIATION, INC.,

DOCKET NOS. CO-77-71  
CO-77-135  
CO-77-137  
CO-78-87

Charging Parties.

SYNOPSIS

The Director of Unfair Practices declines to issue complaints with respect to four Unfair Practice Charges for the purpose of litigating the sole issue of an interest payment to employees attributable to the alleged improper withholding of increments by the Respondent during the pendency of negotiations. Under the facts particular to the Charges, the Director concludes that the Respondent, by recognizing its legal obligations shortly after the Supreme Court's determination, Galloway Township Board of Education v. Galloway Township Education Association, 78 N.J. 25 (1978), showed a respect for the law and established the reasonable likelihood that its conduct in withholding increments until successor contracts are executed will not be repeated in the future. After an examination of circumstances particular to the dispute in the Charges, the Director concludes that the harm to public rights occasioned by the nonpayment of interest on the wrongfully withheld increments is de minimis and does not warrant the issuance of complaints. The Director further notes that his determination is not dispositive of the propriety of an unfair practice decision by the Commission which includes interest as an affirmative remedy.

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

In the Matter of

UNION COUNTY REGIONAL HIGH  
SCHOOL BOARD OF EDUCATION,

Respondent,

-and-

UNION COUNTY REGIONAL HIGH  
SCHOOL TEACHERS ASSOCIATION AND  
THE SECRETARIES AND CLERKS  
ASSOCIATION, INC.,

DOCKET NOS. CO-77-71  
CO-77-135  
CO-77-137  
CO-78-87

Charging Parties.

Appearances:

For the Respondent  
Weinberg, Manoff & Dietz, Esqs.  
(Irwin Weinberg, of Counsel)

For the Charging Party  
Goldberg & Simon, Esqs.  
(Gerald M. Goldberg, of Counsel;  
Gerald M. Goldberg & Louis P. Bucceri, On  
the Brief)

REFUSAL TO ISSUE COMPLAINT

Four Unfair Practice Charges have been filed with the Public Employment Relations Commission (the "Commission") by the exclusive representatives of collective negotiations units consisting of custodial/maintenance employees, secretarial/clerical employees, and professional non-supervisory employees against the Union County Regional High School Board of Education (the "Board")

alleging that the Board has engaged 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) and (5). <sup>1/</sup>

As more particularly described in a letter from the undersigned to the charging parties, which is attached hereto and made a part hereof, the unfair practice charges allege that the Board committed unfair practices by withholding increments from unit employees during the period of negotiations toward collective negotiations agreements which were to succeed recently expired agreements covering unit employees. The Charges, docketed CO-77-71, CO-77-135 and CO-77-137, each with respect to one of the three units, were filed on September 24, 1976 and November 22, 1976 and concerned the 1976-1977 school year. The Charge, docketed CO-78-87, was filed on October 24, 1977 by the Union County Regional Teachers Association, Inc. (the "Association"), with respect to all three units and concerned the 1977-1978 school year.

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. (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/ With the exceptions of the Charge docketed CO-77-137, all Charges were filed by the Association as the exclusive representative of the three units. Apparently, in 1976, the exclusive representative for the secretarial/clerical unit was The Secretaries and Clerks Association, Inc., which filed the Charge docketed CO-77-137. For the purposes herein, the Charging Parties in all four charges shall be denominated as the "Association."

The three Charges filed in 1976 were processed in accordance with N.J.A.C. 19:14-1.6. However, the undersigned on May 18, 1977, declined at that time to issue a complaint inasmuch as stipulations entered into between the parties, and additional information provided by the Board, indicated that negotiated agreements had been culminated with the Charging Parties subsequent to the filing of the Charges which provided for the retroactive payment of increments. The undersigned advised that an Appellate Division decision, Galloway Township Board of Education v. Galloway Township Education Association, 149 N.J. Super. 352 (1977), decided March 29, 1977, made questionable the propriety of issuing a complaint under these circumstances. <sup>3/</sup> The undersigned advised that the further processing of these Charges would be held in abeyance pending the Supreme Court's disposition of petitions seeking certification to review the judgment of the Appellate Division.

The fourth Unfair Practice Charge, CO-78-87, was filed during the period in which the Galloway decision was placed before the Supreme Court. The Association alleged that the Board had again, upon the expiration of the 1976-1977 agreements, withheld increments. The Association sought interim relief from the

<sup>3/</sup> The Appellate Division in Galloway, supra, which involved an unfair practice allegation concerning the withholding of increments for professional certified personnel, agreed with the Appellant Board that "PERC should have declined to rule on the issues presented and should have declared the matter moot by reason of a voluntary negotiated agreement between the parties."

Commission directing the Board to pay increments during the pendency of negotiations toward successor agreements. The Commission's delegee for interim relief proceedings granted the interim relief sought with respect to the employees in the non-professional units. In re Union County Regional High School Board of Education, P.E.R.C. No. 78-27, 4 NJPER 11 (¶ 4007 1978), Appeal dismissed by consent order, App. Div. Docket No. A-1552-77. However, interim relief was not granted with respect to employees in the professional unit inasmuch as successor negotiations agreement providing for retro-active payments of increments had been reached prior to the interim relief proceeding. The Board filed proceedings with the Appellate Division seeking to reverse the Commission's interlocutory decision and order. On August 1, 1978, the Supreme Court reversed the Appellate Division decision in Galloway. The Court found that the increments of the professional employees were wrongfully withheld and that the Unfair Practice Charge did not become moot by virtue of a culmination of a successor collective negotiations agreement. The Board herein, on or about August 30, 1978, moved for dismissal of its appeal of the Commission's interlocutory decision before the Appellate Division "on the basis that the decision of the Supreme Court of New Jersey in the matter of Galloway Township Board of Education v. Galloway Township Education Association [supra], is dispositive of all issues raised in the instant appeal ... " Both the Commission and the Association stipulated to the dismissal.

On September 21, 1978, the Association requested that the undersigned issue formal complaints with respect to all four Charges. It is this request, which is resisted by the Board, which is now before the undersigned.

N.J.S.A. 34:13A-5.4(c) provides that "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 ... " 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 to the Director of Unfair Practices, that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues ... " (emphasis added) <sup>4/</sup> The Commission rules provide that the undersigned may decline to issue a complaint. N.J.A.C. 19:14-2.3. In this regard, the Court, in Galloway, at 78 N.J. 34 stated:

... The determination of whether a charge is sufficiently meritorious to warrant the issuance of a complaint is made by PERC's Director of Unfair Practices. See N.J.A.C. 19:10-1.1(a)(11). Any unfair practice complaint issued includes a notice of hearing

4/ N.J.A.C. 19:12-2.1

on the unfair practice complaint before PERC. N.J.S.A. 34:13A-5.4(c). To this point, PERC's role has been of a prosecutorial nature. (footnote omitted)

The Association's request for the issuance of a complaint is grounded upon a claim that there is no "guarantee that the tactic [i.e., withholding of increments] used in 1976-77 and again in 1977-78 will not be repeated in the future." The Association, additionally, renewed its requests, which had been initially raised upon the filing of the Charges, for a remedy which would include the payment of interest to employees based upon the amounts of increments withheld. Finally, the Association asserted "rights of posting."

On December 7, 1978, the undersigned advised the Association that, based upon the information available to the Commission, it appeared that the issue as to the actual payment of increments had been rendered moot inasmuch as increments were paid by the Board with retroactivity upon the execution of all contractual agreements. Further, the undersigned advised that, assuming an unfair practice had been committed, the necessity for the issuance of a cease and desist order as well as a posting for the benefit of employees was questionable inasmuch as the Board, in promptly moving for a dismissal of its own appeal of the aforementioned interlocutory Commission decision, accepted that the principles set forth in the Galloway matter, supra, were applicable to the issue raised in the instant Charges. The undersigned stated that the Board had demonstrated a respect for the law and that there

appeared to be minimal likelihood for occurrence of the aggrieved conduct in the future.

Lastly, the undersigned questioned whether formal litigation should be instituted for the purpose of securing an interest award inasmuch as the Commission had not previously awarded interest in any proceeding and inasmuch as the appropriateness of pursuing formal litigation for the purpose of obtaining an interest award had not yet been demonstrated by the Association.

The undersigned requested that the Association, if it desired to proceed with its Charges, provide an accounting to the Commission as to the amounts of interest alleged to be due and owing and a legal brief as to the appropriateness of issuing such remedy.

The Association, in response, provided an accounting and a brief on February 2, 1979. In its accounting the Association indicated that, based upon an interest rate of 8% per year, the amount of interest attributable to the withholding of increments in 1976-77 ranged from \$2.02 to \$6.03 per individual teacher (a total of \$744 for the entire unit): \$7.33 per individual custodian (a total of \$190.66 for the entire unit); and \$4.17 to \$16.67 per individual secretary (a total of \$323.29 for the entire unit). The Association's computation of interest attributable to the withholding of increments in 1977-78 ranges from \$1.21 to \$3.62 per individual teacher (a total of \$464.26 for the entire unit); from \$6.67 to \$10 per individual custodian (a total of \$298.32



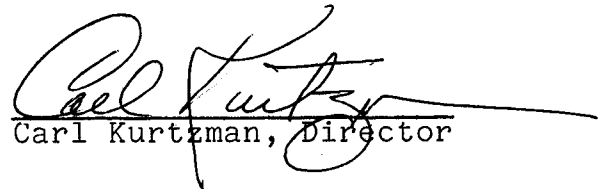
for the entire unit); and from \$4.17 to \$23.33 per individual secretary (a total of \$385.79 for the entire unit). In its brief in support of the remedy of interest, the Association cites decisions under the Labor Management Relations Act and decisions of several States which approve of the remedy of interest in certain circumstances where conduct generally prohibited under §§ 5.4(a)(3) and (a)(5) of the New Jersey Employer-Employee Relations Act has occurred. The Association argues that an award of interest is within the Commission's statutory authority to grant. In addition, the Association states that the imposition of interest as a remedy is appropriate under these circumstances inasmuch as the Board "has evidenced a predisposition to repetition of illegal conduct and it derived a benefit from its improper actions, while the employees in question were never made completely whole."

The undersigned has carefully considered the arguments advanced by the Association in the context of the circumstances particular to this matter. As previously stated, the undersigned is convinced by the prompt and dispositive actions taken by the Board in August 1978 that there is minimal likelihood of occurrence of the aggrieved conduct by the Board in the future and that litigation of these Charges for the purpose of securing a cease and desist order and a posting for the benefit of the employees is not appropriate. Accordingly, in the judgment of the undersigned the issue herein is whether formal proceedings in respect to the Charges should be instituted in order to afford the parties an opportunity to

litigate relevant legal and factual issues solely for the purpose of securing a remedy of interest. In this regard, the undersigned must give consideration not only to the equities of providing a "make whole" remedy to individual employees, but to the public rights which are protected by the Commission under the unfair practice provisions of the Act. The undersigned concludes that the harm to public rights occasioned by the nonpayment of interest on the allegedly wrongfully withheld increments in this particular matter, is de minimis and does not warrant, in the discretion of the undersigned, the issuance of a complaint and the convening of an evidentiary hearing. 5/

Accordingly, for the reasons stated above, the undersigned declines to issue complaints with respect to the four Unfair Practice Charges herein.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: April 4, 1979  
Trenton, New Jersey

5/ This decision is limited to the inappropriateness of issuing complaints herein for the purpose of litigating the sole issue of interest, and is not dispositive of the award by the Commission of interest in appropriate circumstances. The undersigned further notes that the issue of a remedy including interest in an unfair practice proceeding is currently pending before the Commission and may be decided shortly.