

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-83-349

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 617,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an unfair practice charge filed by SEIU, Local 617, against the Newark Board of Education alleging that the Board retaliated against a clerk typist employed by the Division of Design and Construction for seeking and receiving a "grievance meeting" with the Board regarding treatment at the hands of superiors. The Administrator finds that the issue before the Commission has already been raised and litigated before the Civil Service Commission. In consideration of all circumstances, further litigation would be inconsistent with the spirit and the ruling of Hackensack v. Winner, 82 N.J. 1 (1980).

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Appearances:

For the Respondent
Shirley Waters Cato, Associate Counsel

For the Charging Party
Rothbard, Harris & Oxfeld, attorneys
(Arnold S. Cohen of counsel)

REFUSAL TO ISSUE COMPLAINT

On June 29, 1983, Service Employees International Union Local 617 ("Local 617") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Newark Board of Education ("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. ("Act"), specifically

§§ 5.4(a)(1), (3) and (4). 1/

The Charge alleges that the Board retaliated against Delma Green ("Green"), a clerk typist employed in the Division of Design and Construction, because she sought and received a "grievance meeting" with the Board regarding her treatment by her superiors. Among the various acts of retaliation alleged by Local 617, Green received a ten-day suspension. Local 617, on behalf of Green, appealed this suspension to the Civil Service Commission. The matter was heard by an Administrative Law Judge and a recommended decision issued on September 2, 1983. Upon review of the Administrative Law Judge's recommended decision, the Civil Service Commission rendered its final administrative action in the matter on November 10, 1983. 2/

1/ N.J.S.A. 34:13A-5.4(a) prohibits public employers, 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) 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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

2/ At an exploratory conference convened on October 31, 1983, the Commission was advised that the disciplinary review proceeding before the Administrative Law Judge had been completed and that an initial decision had been forwarded to the Civil Service Commission. The parties were requested to brief the question of whether Commission jurisdiction should be asserted. The parties' briefs were received after the Civil Service Commission had adopted, as modified, the Administrative Law Judge's decision.

The undersigned has reviewed all the materials submitted including the Administrative Law Judge's decision and the Civil Service Commission's final administrative action, and finds that further formal proceedings before this Commission are not warranted with respect to the allegations of this unfair practice charge. See N.J.A.C. 19:14-2.1(a) and N.J.S.A. 34:13A-5.4(c).

Further litigation would be inconsistent with spirit and the holding of Hackensack v. Winner, 82 N.J. 1 (1980). This case involved actions filed before both the Civil Service Commission and PERC relating to an employer's promotional decision. Although protected activity claims were not the sole, major or dominating issues placed before the Civil Service Commission, the factual circumstances relating to the protected activity claims were raised in the proceedings before an Administrative Law Judge. The Court noted that the redress sought by the claimants based upon the assertion of improper employer motivation would have been possible through the exercise of the broad remedial powers of the Civil Service Commission. "...[t]here was a substantial likelihood that the entire controversy could have been heard fairly and fully by the Civil Service Commission in a single proceeding with sufficient expertise and competence to account for all genuine concerns, including those occasioned by the unfair labor practice charge." Id. at 35.

In the judgment of the undersigned the instant matter satisfies the criteria considered by the Court in Hackensack v.

Winner in determining whether absentation is appropriate. ^{3/} Here the matter has been litigated before an Administrative Law Judge who considered all arguments made by Local 617 with respect to both the unfair practice allegations and the Civil Service questions

3/ More particularly, the Court stated:

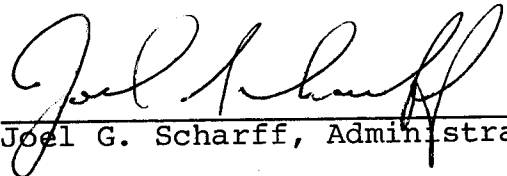
Focusing upon the appeal at hand, these principles should have been invoked in this case at the earliest stages of the dispute, as well as in its terminal phases; they should have been applied not only to resolve the controversy between the parties but also to avoid the collision between the two tribunals. PERC, in exercising its discretion whether to proceed or not in the matter, should have been governed by these considerations. Its first concern should have been whether or not the common issue before both agencies, here the unfair practice, was either the sole or major issue in dispute or a dominating issue in the sense that its determination would have served either to moot the remaining questions in dispute or to have affected substantially their resolution. Another important factor which PERC should have weighed was whether the allegations clearly involved important issues and interests which extended beyond the immediate parties. A further consideration for PERC was whether the common issue was clearly severable from the balance of the controversy and would thus have permitted non-duplicative factual and legal determinations. A related inquiry should have been whether the claims, if ultimately vindicated would obviously have required specialized or particularized remedial relief not generally available in the other agency. The single-controversy doctrine constituted a further key consideration, i.e., whether the common issue could have been fairly, competently and fully tried and adjudicated together with and as a constituent part of all other issues in the case before one agency so that fragmented and repetitious actions would be avoided, all relevant concerns addressed and the entire controversy concluded in a single proceeding.

82 N.J., at 33, 34

of law. In his recommended decision, the Administrative Law Judge specifically refers to the Charging Party's allegation that "...most of the documentation about her behavior was written after she asked for and received a meeting with Labor Relations people." Thus, it would appear that the issue before the Commission has already been raised and litigated before the Civil Service Commission. Additionally, the undersigned is satisfied that the decision reached in the Civil Service proceeding was essentially achieved through the proper balancing of considerations outlined by the Supreme Court in In re Tp. of Bridgewater and Bridgewater Public Works Assn., 95 N.J. ___ (February 2, 1984).

For the foregoing reasons, the undersigned declines to issue a complaint with respect to the unfair practice charge herein.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: April 5, 1984
Trenton, New Jersey