D.U.P. NO. 86-7

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

In the Matter of

BRIDGEWATER RARITAN EDUCATION ASSOCIATION,

Respondent,

-and-

DOCKET NO. CI-86-11

AD HOC CONCERNED BRIDGEWATER RARITAN ELEMENTARY TEACHERS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed against the Bridgewater Raritan Education Association. The charge alleges that the Respondent breached its duty of fair representation by agreeing in negotiations with the employer to a lengthening of Charging Parties' work day. The Director held that a majority representative is accorded a wide range of reasonableness in negotiating a collective agreement. Charging Parties failed to establish that the Respondent was motivated by bad faith or hostility in regard to its conduct of negotiations.

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Appearances:

For the Respondent
John A. Thornton, Jr., UniServ Rep.

For the Charging Party
Mary Brightbill, Rep.

REFUSAL TO ISSUE COMPLAINT

On September 23, 1985, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by the Ad Hoc Concerned Bridgewater Raritan Elementary Teachers ("Charging Party") alleging that the Bridgewater Raritan Education Association ("Association") 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. ("Act"), specifically §5.4(b)(3). [1/] Additionally, the facts set forth in the charge and the contentions asserted during the exploratory conference allege that the Association has breached its duty of fair representation in violation of §5.4(b)(1) [2/] of the act.

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 me and has established a standard upon which unfair practice complaints shall

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1/ This subsection prohibits employee organizations, their representatives or agents from: " (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."

2/ This subsection prohibits employee organizations, 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/ "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 desiganted agent thereof , shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charge and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof; provided that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six month period shall be computed from the day he was no longer prevented."

be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act [4/] and the Commission's Rules provide that I may decline to issue a complaint where appropriate.[5/]

On February 27, 1985, I advised the Charging Party that there appeared to be no basis to support the allegations in its unfair practice charge. Charging Party was provided an opportunity to submit additional statements of position and factual proffers in support of its allegations that the Association violated the Act. I have received no response.

For the reasons stated below, I have determined that the Commission's complaint issuance standard has not been met in this matter.

In June 1985, the Association and the Bridgewater Raritan Board of Education ("Board") entered into a successor Agreement. The Agreement provided for an increase in the elementary school teachers' workday by 30 minutes. The Charging Party contends that they were told by the leadership of the Association on numerous occasions throughout the negotiations process that the Association would not agree to an increase in the workday of the elementary school teachers. The Charging Party argues that by incorporating a

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

5/ N.J.A.C. 19:14-2.3

provision in the final agreement increasing the elementary school teachers' workday, the Association breached its duty of fair representation and negotiated in bad faith in violation of the Act.

With repsect to the issue of the length of the elementary school teachers' workday, the Association contends that it maintained a consistent negotiations posture whereby it would agree to a lengthing of the elementary school day only in return for substantial economic consessions from the Board. The Association states that the Board's economic consessions were, in fact, sufficient to move the Association to agree to the lengthened elementary school day. The Association contends that the decision to agree to a lengthened elementary school day was not motivated by any animus directed toward elementary school teachers, but rather, its perception that acquiescence on this issue will provide the unit, as a whole, the best Agreement attainable. The Association points out that an elementary school teacher served on the negotiating team which unanimously recommended the successor Agreement, inclusive of the lengthened elementary school day, to the membership for ratification.

ANALYSIS

In the context of a challenge to a union's representation in the negotiation of a collective agreement, the United States Supreme Court stated:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes

> of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

In re Ford Motor Co. v. Huffman, 346 U.S. 330, 338 (1953); See also Humphrey v. Moore, 375 U.S. 335 (1964). This test has been specifically adopted by the Commission in In re Lawrence Twp. PBA Local 119, P.E.R.C. No. 84-71, 10 NJPER 41 (¶ 15023 1983); In re City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98, 99 (¶ 13040 1982). .

Other pertinent Commission and court decisions set forth the similar proposition that:

> ... a negotiated agreement that results in a detriment to one group of employees as opposed to other unit members, i.e. a lesser salary increase than the other employees or a longer work day than others, does not establish a breach of duty of fair representation on the part of the majority representative. Absent clear evidence of bad faith or fraud, unions have been permitted to make temporary compromises that may adversely affect certain members of a negotiations unit for the benefit of all unit members or a majority of these individuals.

In re Hamilton Tp. Ed. Assn., P.E.R.C. No. 79-20, 4 NJPER 476, 478 (¶4215 1978). See also, Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super 486 (App. Div. 1976) and McGrail v. Detroit Fed. of Teachers, 82 LRRM 2623 (Mich. Cir. Ct. 1973).

It is evident to me that in the instant matter the Association was presented with the opportunity to obtain what it

considered to be a rather sizeable salary increase for its membership in return for the lengthening of the elementary school teachers' workday. From the outset, the Association took the position that the Board would have to pay dearly for any increase in the length of the workday. At least from the Association's perspective, its price had been met.

There are no facts pled which support the allegation of bad faith or fraud in this case. Such evidence would require a showing that the Association's conduct in negotiations was motivated by hostility toward a segment of the group it represents or by illegal considerations. In re City of Union City, supra.[6/] Thus, a breach of its duty exists when the majority representative makes a deliberate decision in bad faith to cause a unit member or a particular sub-group economic harm. While currently there may be a certain degree of unhappiness on the part of the elementary school teachers and, as the result thereof, a certain level of animosity may have arisen, there is no evidence of any pre-agreement hostility exhibited on the part of the Association toward the elementary school teachers. Accordingly, I find neither a breach of the

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6/ For example, intentional discrimination in negotiations aimed at members on the basis of sex or race will constitute a breach of the duty of fair representation. See e.g., Steele v. Louisville & Nashville R.R., 323 U.S. 192, 15 LRRM 708 (1944); and Farmer v. Hotel and Restaurant Employees Loc. 1064, 99 LRRM 2166 (E.D. Mich. 1978).

Association's duty of fair representation, nor any evidence that it refused to negotiate in good faith with a public employer. 7/.

Accordingly, as a matter of law, the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the basis of this charge against the Bridgewater Raritan Education Association.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: March 25, 1986
Trenton, New Jersey

7/ In any event, it is noted that individual employees do not have standing to allege a violation of §5.4 (b)(3) of the Act. See In re New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980).