D.U.P. NO. 89-7

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

In the Matter of

MIDDLETOWN TOWNSHIP,

Respondent,

-and-

Docket No. CO-89-46

MONMOUTH COUNTY CIVIL SERVICE ASSOCIATION, INC.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the Township violated the New Jersey Employer-Employee Relations Act when it delivered a notice to all blue collar unit members and white collar unit members detailing its most recent contract offer and urging that they vote on the proposal.

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Appearances:

For the Respondent
James Allway, Administrator

For the Charging Party
Patterson & Hundley, Esqs.
(James T. Hundley, of counsel)

REFUSAL TO ISSUE COMPLAINT

On August 9, 1988, the Monmouth County Civil Service Association, Inc. ("Association") filed an unfair practice charge alleging that the Township of Middletown ("Township") violated subsections 5.4(a)(1), (2), (3) and (5),[1/] of the New Jersey

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1/ These subsections prohibit 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of

Footnote Continued on Next Page

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it delivered a notice to all blue collar unit members and white collar unit members detailing the Township's most recent contract offers and recommending that the employees contact their union representatives and urge them to formally vote on the proposal.

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.[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 the charging party, if true, may

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1/ Footnote Continued From Previous Page

employment to encourage or discourage 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/ 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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

constitute an unfair practice within the meaning of the Act.[3/] The Commission's rules provide that I may decline to issue a complaint.[4/]

The Monmouth County Civil Service Association represents both the blue collar unit and the white collar unit in Middletown Township. The Township's contract covering each unit expired on December 31, 1987. From February through April 1988, representatives of both the blue and white collar units met with Township representatives to negotiate a new contract. On May 9, 1988, a notice of impasse was filed with the Public Employment Relations Commission by the union on behalf of both bargaining units. On June 24, 1988, a mediation session was scheduled. During the course of that session, the Township offered a proposal for a three-year contract. Immediately following that meeting, the Township's offer was formally presented to both bargaining units and was rejected by a formal vote. Results of the votes were conveyed to the Township's negotiators. On July 22, 1988, the parties were notified that fact finding with recommendations for settlement was being invoked. On August 2, 1988, the Township delivered a written notice to all members of the blue and white collar bargaining units. The notice contained details of the Township's contract offer and recommended that the employees contact their union

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

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

representatives and urge them to have a formal vote on the proposal. The Association contends that the notice constitutes a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (5).

It is well established under federal labor law precedent, that an employer has the right to communicate with its employees during the period of contract negotiations, provided the communications contain no threat of reprisal or force or promise of benefit. In NLRB v. Corning Glassworks, 204 F.2d 422 (1st Cir. 1953), 32 LRRM 2136, the Court held that:

> ...The First Amendment of the Constitution of the United States protects an employer with respect to the oral expression of his views on labor matters provided his expressions fall short of restraint or coercion (NLRB v. Virginia Electric and Power Co., 314 U.S. 469, 477 [9 LRRM 405] (1941), and section 8(c) of the Act, supra, protects an employer with respect to like expressions in written, printed, graphic or visual form, provided his expressions contain "no threat of reprisal or force or promise of benefit." 32 LRRM at 2139.

That Court had the benefit of considering section 8(c) of the National Labor Relations Act ("NLRA") which provides:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

Subsequent decisions of the NLRB illustrate the employer's right to communicate to employees during the period of contract negotiations. See TM Cobb Co., 224 NLRB No. 104, 93 LRRM 1047 (1976); Safeway Trails, Inc., 216 NLRB No. 171, 89 LRRM 1017 (1975);

PPG Industries, Inc., 172 NLRB No. 61, 69 LRRM 1271 (1968) and Proctor and Gamble Mfg. Co., 160 NLRB No. 334, 62 LRRM 1617 (1966).

In Proctor and Gamble, the Board found that employer letters to employees during negotiations that criticized the union's bargaining strategy did not constitute a violation of the Act. The Board found that the employer's communications were motivated solely by the desire to relate its version of negotiations breakdown. In PPG Industries, the Board found no violation where the employer sent letters to the employees outlining proposals that had been rejected by the union, and indicated a readiness to discuss any problems directly with employees.

Although the specific language of section 8(c) of the NLRA is not present in the New Jersey Employer-Employee Relations Act, the Commission, through the adoption of hearing examiner recommendations, has adopted the 8(c) standard.[5/] Camden Fire Department, P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982), adopting H.E. No. 82-34, 8 NJPER 181 (¶13078 1982); Rutgers, The State

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5/ See Lullo v. Int'l Assn. of Firefighters, 55 N.J. 409 (1970) and Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Educ'l Secretaries, 78 N.J. 1, 4 NJPER 328 (¶4162 1978), which support the recommendation that section 8(c) of the NLRA be adopted in New Jersey. In Galloway, the New Jersey Supreme Court reasoned that our Act was based upon the NLRA and accordingly,

> ...the absence of specific phraseology in a statute may...be attributable to a legislative determination that more general language is sufficient to include a particular matter within the purview of the statute without further elaboration....
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> 78 N.J. at 15

University, P.E.R.C. No. 83-136, 9 NJPER 276 (¶14127 1983), adopting H.E. No. 83-26, 9 NJPER 177 (¶14083 1983); State of New Jersey (Trenton State College), P.E.R.C. No. 88-19, 13 NJPER 720 (¶18269 1987).[6/]

In this case, the notice sent to the employees in the blue collar and white collar units was not an inherently coercive communication. It was a reiteration of the most recent contract offer, and a plea to bargaining unit members to consider the offer and if they agreed with it to urge their union representatives to call for a vote on the proposed contract.

Accordingly, we have determined that the Commission's complaint issuance standard has not been met and we decline to issue a complaint in this matter. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber
Director of Unfair Practices

DATED: December 29, 1988
Trenton, New Jersey

6/ See also Jersey City, H.E. No. 79-2, 4 NJPER 276 (¶4141 1978), which constitutes the first case recommending adoption of the NLRB standard to the Commission. Although the case was settled and withdrawn prior to Commission consideration, its facts are relevant to this issue. In that case, the City sent a letter to employees during negotiations that informed them of their proposals and position. The Hearing Examiner found that the letter did not contain any threat to employees and recommended dismissal of the complaint.