

D.U.P. NO. 2003-8

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

In the Matter of

CITY OF ENGLEWOOD,

Charging Party,

-and-

Docket No. CE-2002-6

PBA LOCAL 216,

Respondent.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the City of Englewood against PBA Local 216, the majority representative of rank-and-file police officers. The City alleged that the PBA president's letters directly to the City Council violated the prohibition against interfering with an employer's selection of a negotiations representative. The Director finds that the alleged facts do not support a finding that the PBA attempted to coerce the City with regard to its designation of a negotiations representative. Further, the Director finds that the PBA was not unlawfully insisting on negotiations over staffing levels, but that it merely sought a dialogue over an issue it perceived to be a problem.

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Appearances:

For the Charging Party
Robert L. Benecke, City Manager

For the Respondent
Loccke & Correia, attorneys
(Leon B. Savetsky, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 22 and March 25 and 26, 2002, the City of Englewood (City) filed an unfair practice charge and an amended charge with the Public Employment Relations Commission (Commission). The charges allege that PBA Local 216 (PBA) violated subsections 5.4b(2) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), when on January 7, 2002, and thereafter, the PBA attempted to interfere with or circumvent the City's selection of a negotiations representative.

^{1/} These provisions prohibit employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (5) Violating any of the rules and regulations established by the commission."

On March 17, 2002, the PBA filed a position statement, denying that it violated the Act and asserting that it had the right to communicate directly with the City Council and could not have interfered with the City's choice of a negotiations representative since there were no negotiations ongoing at the relevant times.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated January 3, 2003, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

The City and PBA are parties to a series of collective negotiations agreements, the most recent of which is effective from January 1, 2000 through December 31, 2003. PBA Local 216 represents all superior officers employed by the City excluding Police Chief David Bowman and the deputy chief.

City Manager Robert L. Benecke is the City's designated collective negotiations representative and also administers the City's budget, including the police department's budget. The City's

governing body consists of the mayor, city council president and five council members.

On January 7, 2002, PBA President Fred Pulice wrote to City Council President Jack Drakeford. The letter states:

The PBA is seeking the help of the Mayor and City Council to correct the serious and gross deficiencies in the current staffing levels of the police department. As Council President I am writing you to request a meeting with Mayor Fader and the entire City Council.

As you previously suggested I attempted to resolve the matter with the Chief of Police and the City Manager. Chief Bowman agrees with the PBA and wants to increase staffing levels however; he states he is bound by budgetary constraints placed upon him by the City Manager. I met with Mr. Benecke and presented our concerns on October 17, 2001. Although he did not refute that the issues I presented were valid and serious he has not taken any appropriate corrective action.

I believe that the subject matter and specific information I plan to present are sensitive and therefore would suggest that the meeting not be public. I feel it would be unfair and inappropriate to the Mayor and Council to have to field public reaction without first having the opportunity to act upon the information presented.

I would also recommend that you invite Mr. Benecke to the meeting so that he may argue his position and be afforded the opportunity to refute any statements he feels are inaccurate.

On January 10, 2002, Council President Drakeford wrote to Pulice and advised him that the Council does not interfere with the day-to-day operations of the City's departments and referred Pulice to City Manager Benecke.

On February 20, 2002, after the initial charge was filed, Pulice wrote to the new Council President, Mitchell Rosenberg. The letter states:

Please consider this letter as follow-up and renewal of the PBA's prior request to meet with the mayor and council to discuss the staffing deficiencies in the police department, which are putting lives unnecessarily at risk on a regular basis.

The PBA considers its role as including public safety as well as maximizing officer safety. We are police officers first and foremost and we are guided by oath of office to protect and serve. We have some serious concerns regarding citizen and officer safety, which we believe merit your attention. We also have some positive ideas to address the situation, which we would like to discuss with you and the council.

As a courtesy we have followed the chain of command by addressing our concerns with the Chief of Police and the City Manager. Chief Bowman is in agreement with the PBA and has expressed his immediate manpower needs to Mr. Benecke and recently to the council at his budget hearing. The City Manager however, has failed to respond to our concerns and has sought a PERC order restraining me from meeting with the Mayor and Council. With all due respect to both those gentlemen, we believe this is a matter for your direct involvement as it affects citizen's safety and governmental policy.

We again request to have a small committee of our PBA leadership meet with the Mayor and Council to discuss these important issues. The members of the PBA believe a tragedy will occur in our city as a direct result of insufficient manpower. No one will be able to forgive themselves if an avoidable tragedy occurs.

ANALYSIS

The City argues that the PBA violated the Act by attempting to circumvent the City's negotiations representative, and interfered

with the City's policy-making powers by seeking to negotiate over staffing levels.

Employers and employee representatives must meet at reasonable times and negotiate in good faith over terms and conditions of employment. N.J.S.A. 34:13A-5.3. Neither the employer nor the majority representative may interfere with each other's choice of representatives for negotiations and grievance processing. Middletown Tp. Bd. of Ed., P.E.R.C. 96-46, 22 NJPER 35 (¶27017 1995); Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980). The City asserts that the PBA violated N.J.S.A. 34:13A-5.4b(2). This section expressly prohibits an employee organization from interfering with restraining, or coercing a public employer's selection of its representatives for negotiations or grievance adjustments.

In Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985), the Commission adopted this test for evaluating allegations of 5.4b(2) violations:

In order to establish a violation of this section, the charging party must establish a coercive pattern of union conduct designed to interfere with the employer's choice of representative for purposes of collective bargaining. [Id. at 6.]

Here, the facts alleged do not support a finding that the PBA engaged in a pattern of coercive conduct. The parties were not engaged in collective negotiations at the time; nor did the PBA's letter to the City Council seek to negotiate. Therefore, there is no basis to conclude that PBA was attempting to coerce the City with regard to its designation of a negotiations representative.

The City further asserts that the PBA violated the Act by seeking to negotiate over staffing levels, which the City argues is a management prerogative. The Commission has long held that an employer has an inherent managerial prerogative to determine minimum staffing levels. Borough of West Paterson, P.E.R.C. No. 2000-62, 26 NJPER 101 (¶31041 2000); Franklin Borough, P.E.R.C. No. 98-138, 24 NJPER 273 (¶29130 1998). Therefore, the employer cannot be required to negotiate over staffing levels. However, while the union may not insist on negotiations over non-mandatory topics, nothing in the Act prevents either party from seeking a dialogue over issues that are otherwise not mandatorily negotiable. For instance, in Local 195, IFPTE v. State, 88 N.J. 393 (1982), the Supreme Court held that an employer's decision to subcontract services is not mandatorily negotiable, but encouraged the parties to engage in discussions.

Here, it does not appear that the PBA was insisting on negotiations over staffing levels. In fact, its letter to the council did not demand negotiations -- it sought a meeting to discuss an issue it perceived to be a problem. Public employees possess the right to communicate with the governing body. In W. Windsor Tp. v. PERC, 78 N.J. 98, 111 (1978), the Court observed:

[Public employees] possess rights not only as public employees but also as citizens of this State. Under N.J. Const. (1947), Art. I, para. 18, they, like all other citizens, possess the right to petition the government for the 'redress of grievances.' Public employees, of course, possess the right to seek to influence governmental decision-making to the same extent and through the same means as all other citizens

. . . through the customary political channels. . . .

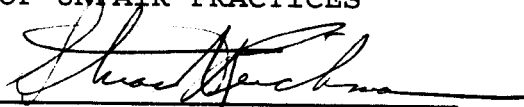
Accordingly, I find that the PBA's letters to the governing body, seeking a dialogue over staffing issues, did not violate the Act. Further, since the PBA was not demanding to reopen contract negotiations over staffing levels but merely asking City Council for a discussion, I note that all the City need have done was to decline the invitation.

Based upon the facts in this matter, I decline to issue a complaint on this charge. The facts do not meet the Commission's complaint issuance standards.^{2/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: January 16, 2003
Trenton, New Jersey

^{2/} N.J.A.C. 19:14-2.3.