

D.U.P. NO. 97-32

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

In the Matter of

BOROUGH OF PARAMUS,

Respondent,

-and-

Docket No. CO-97-51

PARAMUS EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that, contrary to past practice, the employer implemented a contract settlement for its supervisors unit before completing negotiations for non-supervisory employees. The Director finds that the non-supervisory representative may not control the negotiation or administration of the supervisors' contract, regardless of past practice.

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Appearances:

For the Respondent
Ruderman & Glickman, attorneys
(Mark Ruderman, of counsel)

For the Charging Party
Maccarone & Farhi, attorneys
(Michael Farhi, of counsel)

REFUSAL TO ISSUE COMPLAINT

On August 12, 1996, the Paramus Employees Association filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Borough of Paramus violated subsections 5.4 (a) (1), (2), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} The Association

^{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. (5) Refusing to negotiate in

alleges that, while it was negotiating a successor agreement with the Borough for its non-supervisory unit, the Borough implemented a wage settlement with the supervisors' unit.

The Commission has authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission has delegated the authority to issue Complaints to me. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3. For the reasons that follow, I decline to issue a Complaint concerning the charge.

The PEA represents a unit of the Borough's non-supervisory staff and the PEA Supervisors Group represents the Borough's supervisors. The Borough and the PEA were engaged in separate negotiations for these units when, in August, 1996, the PEA Supervisors' Group reached agreement for a successor contract covering the supervisors unit for 1995-97. The PEA Supervisors' Group representatives provided the Borough's negotiations chairman

1/ Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission."

with a memorandum accepting the Borough's offer for salary increases and confirming other prior agreements. The memorandum concludes with:

...Until negotiations are completed with the PEA Non-Supervisor's group, the PEA Supervisor's group will refrain from signing of the new PEA Supervisor's contract.

The memorandum is signed by three negotiators for the PEA Supervisors.

The Borough then paid the supervisors their negotiated salary increases retroactive to January, 1995. The PEA^{2/} alleges that the Borough's payment to the supervisors, while the PEA non-supervisory unit was still negotiating, violates a past practice between the parties as well as the Borough's agreement with the PEA Supervisors.

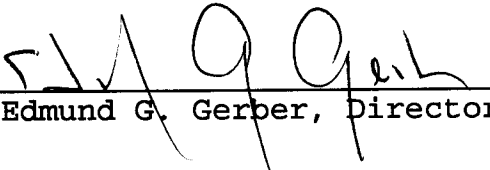
An employer has a legal obligation to implement the terms of a negotiated agreement. In effect, the PEA is suggesting that the Borough's settlement in one unit is contingent on settlement in another unit. The Borough would risk committing an unfair practice if refrained from implementing one contract based upon the status of negotiations in another unit. The PEA non-supervisory organization has no ability to control the substance or procedure of any settlement with other units, regardless of past practice. See City

^{2/} It is unclear whether the charging party is the PEA Non-Supervisors, the PEA Supervisors, or both.

of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982).^{3/} Nor may the PEA Supervisors insist that its contract be conditioned on a settlement in another unit. No. Brunswick Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 493 (¶11095 1980).

Therefore, I find that the Borough did not commit an unfair practice when it paid the supervisors unit its salary increases before settling the non-supervisory unit contract. Accordingly, the charge does not meet the Commission's Complaint issuance standards and is dismissed.^{4/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 22, 1997
Trenton, New Jersey

^{3/} An organization which represents supervisors, must be independent of any organization which represents non-supervisors for the purposes of negotiations and contract administration. See also, Essex Cty. Voc-Tech. Bd. of Ed., P.E.R.C. No. 94-48, 19 NJPER 584 (¶24278 1993), aff'd 21 NJPER 63 (¶26045 App. Div. 1995), certif den. 141 N.J. 96 (1995); Hudson Cty., D.R. No. 85-7, 10 NJPER 623 (¶15297 1984), aff'd NJPER Supp.2d 157 (¶138 App. Div. 1985).

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