

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

In the Matter of

HAMILTON TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and-

DOCKET NO. CO-80-268

HAMILTON TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to a Charge that the Board refused to negotiate in good faith by filing a notice of impasse with the Commission. The Director notes that the filing of a notice of impasse is not a per se unfair practice and concludes that the Charge did not describe totality of conduct which would be necessary for the issuance of a complaint. The Director also notes that the Commission has empowered the Director of Conciliation with the authority to investigate notices of impasse to determine whether an impasse exists, that a forum under N.J.A.C. 19:12-3.1 is provided to contest the existence of an impasse before the Director of Conciliation, and that litigation of this issue in an unfair practice forum would be inappropriate usurpation of the Director of Conciliation's power and frustrate the public policy of facilitating the prevention and prompt resolution of labor disputes.

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Appearances:

For the Respondent
Aron, Till & Salsberg, attorneys
(Lester Aron, of counsel)

For the Charging Party
Greenberg & Melk, attorneys
(Arnold M. Melk, of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on March 3, 1980, by the Hamilton Township Education Association (the "Association") against the Hamilton Township Board of Education (the "Board") alleging that the Board 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. (the "Act"), specifically

N.J.S.A. 34:13A-5.4(a)(1) and (5). ^{1/}

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 the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met.

^{1/} These subsections prohibit 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; (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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof ... "

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

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

The Association states that beginning on January 9, 1980, it engaged in negotiations with the Board for an agreement to succeed the existing collective negotiations contract which was due to expire in June 1980. After three separate negotiations sessions, during which nine contract articles were addressed, the Board informed the Association that negotiations were at an impasse, notwithstanding the existence of approximately 25 articles subject to negotiations. The Association states that: "The 'impasse' declared by the respondent was a pretext by respondent in order to avoid its lawful obligation to bargain in good faith with the charging party."

The Association does not state that the Board has refused to meet any further concerning a successor collective negotiations agreement. Rather, the Association indicates in its charge that the Board has filed a notice of impasse with the Commission. Thus, it appears that the Board's declaration of impasse, which is the alleged unfair practice, actually relates to the Board's filing of a notice of impasse. ^{5/}

^{5/} N.J.A.C. 19:16-3.1 provides that where an employer and representative have failed to achieve an agreement through direct negotiations, either or both may notify the Director of Conciliation, in writing, of the existence of an impasse and request the appointment of a mediator. The Director, upon receipt of this notification shall appoint a mediator if it is determined after investigation that mediation is not being resorted to prematurely, that the parties have not reached agreement through direct negotiations, and that an impasse does in fact exist in negotiations.

Thus, by filing the standard form the Board was advising the agency that, in its opinion, the direct negotiations were at an impasse and that there was a need for the assignment of a mediator to assist the parties in further negotiations. A declaration of impasse by the Board is an essential prerequisite for accomplishing this objective.

In essence, the Charging Party has asked the Commission to isolate the single act of filing the notice of impasse and to declare that action an act of bad faith negotiations where the parties have not directly addressed all contract proposals. However, in matters involving allegations that a party's negotiations approach has been in bad faith, the Commission has declined to base its judgment upon isolated events. The Commission has stated that the totality of conduct engaged in by a respondent must be examined in order to establish a violation of the Act. This standard has been approved in State of New Jersey v. Council of N.J. State College Locals, NJSFT, AFT, AFL-CIO, 141 N.J. Super. 470 (1976), aff'g E.D. No. 79, 1 NJPER 39 (1975).

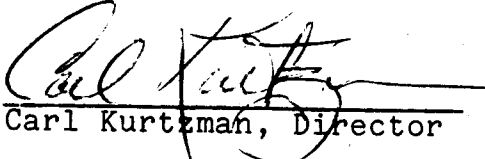
The undersigned notes that the filing of a notice of impasse, and the attendant declaration of impasse associated therewith, is not of itself an unfair practice since it does not indicate an intent to refrain from further negotiations. It appears to the undersigned that the facts alleged by the Association herein do not describe a totality of conduct which, if true, may constitute an unfair practice of refusal to negotiate in good faith.

Additional reasons compel this determination. The act of filing a notice of impasse is a privilege afforded to public employers and exclusive representatives by Commission rule and its exercise should not be chilled. Thus, the act of filing a notice of impasse, by itself, cannot constitute an unfair practice.

Second, the Commission has delegated to the Director of Conciliation the authority to determine if an impasse exists. The Director may assign a mediator after his investigation reveals a genuine impasse. If the Director finds that an impasse does not exist the parties are urged to continue direct negotiations. Thus, the issue of whether an impasse exists is placed before the Director of Conciliation for determination. The procedure under N.J.A.C. 19:12-3.1(b) is the proper forum to contest the existence of an impasse. Litigation of this issue in an unfair practice forum would constitute an inappropriate usurpation of the Director of Conciliation's power, and more importantly, frustrate the public policy of facilitating the prevention and prompt resolution of labor disputes by infringing upon the Director's discretion in an extremely delicate area.

Accordingly, for the reasons set forth above, the undersigned declines to issue a complaint in the instant matter.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: May 14, 1980
Trenton, New Jersey