

D.U.P. NO. 90-8

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

In the Matter of

TOWNSHIP OF BERLIN & BERLIN TOWNSHIP
PUBLIC WORKS EMPLOYEES,

Respondents,

-and-

Docket Nos. CO-90-37 & CO-90-38

TEAMSTERS UNION LOCAL 115

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges alleging that the Township and the Public Works Employees illegally extended the collective negotiations agreement to prevent Local 115 from filing a representation petition. The Director holds that premature extension of an agreement does not bar representation petitions filed during an open period. The Director also dismisses an allegation that the Township discriminated against an employee engaged in union activity because the charge did not contain a clear and concise statement of the facts as required by N.J.A.C. 19:14-1.3.

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Appearances:

For the Respondent Township
Maressa, Goldstein, Birsner, Patterson,
Drinkwater & Oddo, Esqs.
(David C. Patterson, of counsel)

For the Respondent Public Works Employees
Peter J. Hartman

For the Charging Party
Norton H. Brainard, III, Esq.

REFUSAL TO ISSUE COMPLAINT

On August 3, 1989, Teamsters Union Local No. 115, affiliated with the IBT, AFL-CIO ("Local 115") filed unfair practice charges against the Berlin Township Public Works Employees ("Public Works Employees") and the Township of Berlin ("Township"). The charges allege that the Public Works Employees violated subsections 5.4(b)(1) and (5)^{1/} and the Township violated subsections

^{1/} These subsections prohibit 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. (5) Violating any of the rules and regulations established by the commission."

5.4(a)(1), (2), (3) and (7)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act") when they prematurely extended the collective negotiations agreement to prevent Local 115 from filing a representation petition.

The collective negotiations agreement between the Township and the Public Works Employees was due to expire on December 31, 1990. The charges allege that in approximately March, 1988, employees represented by the Public Works Employees voted to affiliate with Local 115. In May 1989, the Township and the Public Works Employees extended the collective negotiations agreement until December 31, 1991.

The charge against the Township also alleges that it discriminated against "an employee in the exercise of union activity."

The Commission has delegated its authority to issue complaints to me and 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 charging party's

^{2/} 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 employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

allegations, if true, may constitute unfair practices within the meaning of the Act.^{3/} If this standard has not been met, I may decline to issue a complaint.^{4/}

For the reasons set forth below, I do not find that the Commission's complaint issuance standards have been met.

N.J.A.C. 19:11-2.8(c) provides:

During the period of an existing written agreement containing substantive terms and conditions of employment having a term of three years or less, a petition for certification of public employee representative normally will not be considered timely filed unless: ... (2) In a case involving employees of a county or municipality, any agency thereof, or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement....

Premature extension of a collective negotiations agreement does not bar representation petitions filed during the open period provided by N.J.A.C. 19:11-2.8(c). In New England Telephone and Telegraph Co., 179 NLRB No. 93, 72 LRRM 1392 (1969), the National Labor Relations Board discussed its premature extension doctrine:

In determining when a petition has been timely filed, the Board has consistently sought to provide guidance as to the appropriate time to organize and seek a change of representatives, and to secure to employees the right to change

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

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

representatives at reasonable intervals. The Board concluded that stability in labor relations would be facilitated by using reasonable guidelines as to timeliness of petitions. To this end we have long held that a new contract for a longer period signed during the term of a previously executed agreement that would bar a petition, can itself prevent the processing of a rival petition only for the remainder of the period when the prior contract would have been such a bar.^{5/} (Footnotes omitted).


Under the premature extension doctrine, Local 115 may file a timely representation petition not less than 90 days or more than 120 days before the original agreement was set to expire or after the expiration of the original agreement. Since extension of the agreement will not prevent Local 115 from filing a timely representation petition, these allegations do not constitute a violation of the Act.

Local 115 also alleged that the Township discriminated against an employee engaged in union activity. On December 13, 1989, I wrote a letter to Local 115 and explained that the charge did not contain a clear and concise statement of the facts concerning this allegation, as required by N.J.A.C. 19:14-1.3. I indicated that in the absence of an amendment we would dismiss the allegation. Since Local 115 has not amended the charge to provide us with a clear and concise statement of the facts, no violation of the Act is stated here.

^{5/} In Lullo v. Int'l Assn. of Firefighters, 55 N.J. 409 (1970), the New Jersey Supreme Court approved the Commission's use of federal sector precedent in unfair practice litigation.

The allegations of the charges do not constitute violations within the Act. Accordingly, the Commission's complaint issuance standard has not been satisfied and the charges are dismissed. N.J.A.C. 19:14-2.1 and 2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: January 26, 1990
Trenton, New Jersey