

D.U.P. NO. 94-14

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

In the Matter of

WOODBIDGE TOWNSHIP

Respondent,

-and-

Docket No. CI-93-90

THOMAS KOPANYI AND CHARLES ZIMMERMAN,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by two employees alleging that their employer, Woodbridge Township, violated the Act by proposing a settlement agreement which linked the settlement of the contract negotiations to settlement of pending employees' disciplinary charges. The Director found that the employees lack standing to raise 5.4(a)(5) allegations that the employer failed to negotiate in good faith, and that the proposal did not coerce or discriminate against the employees.

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Appearances:

For the Respondent
Genova Burns, attorneys
(Joseph Licata, of counsel)

For the Charging Parties
Reed and Scholl, attorneys
(Robert W. Becker, of counsel)

DECISION

On June 16, 1993, Thomas Kopanyi and Charles Zimmerman filed an unfair practice charge against their employer, the Township of Woodbridge. Charging Parties allege that the Township violated subsections 5.4(a)(1), (3), (4), (5) and (7)^{1/} of the New Jersey

^{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. (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. (4) Discharging or otherwise discriminating against any

Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq, by offering the employees' exclusive representative, AFSCME Local 2292, a comprehensive settlement of outstanding labor issues, including contract negotiations and pending disciplinary matters. The Township allegedly proposed to drop suspension/ termination charges against 11 employees, including Kopanyi and Zimmerman, if the affected employees would sign a "last chance" agreement, which would remain in effect for six months.

Charging parties allege that the Township failed to negotiate in good faith by its "linkage" of a settlement of the disciplinary charges to the contract settlement. It further contends that the Township's settlement proposal constitutes an unfair practice because it coerces employees to accept the employer's proposed contract and it discourages them from pursuing their own bargaining position.

The Township responded to the charge. It asserts that AFSCME, not it, first proposed the comprehensive settlement of the contract and the employees' pending discipline. The Township concedes that it made a counter-proposal to AFSCME which contained

1/ Footnote Continued From Previous Page

employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (7) Violating any of the rules and regulations established by the commission."

an offer on both the contract and on the employees pending discipline. It argues that it did nothing improper by attempting to resolve the disciplinary dispute with the union. It points out that its proposal was contingent on acceptance by the union, and that the individual employees would necessarily have to agree to the resolution of the disciplinary charges as well. The union membership rejected the settlement, and neither AFSCME or the Township further pursued settlement of the discipline.

As to the allegation that the Township' offer (or counteroffer) amounted to a failure to negotiate in good faith, only the majority representative has standing to bring such a claim. N.J.S.A. 34:13A-5.3 requires an employer to negotiate with the majority representative:

Representatives designated or selected by public employees for the purposes of collective negotiation...shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit...A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees...

In Essex County College, P.E.R.C. No. 87-81, 13 NJPER 75, 76 (¶18034 1986), the Commission stated:

Our law is settled that only the majority representative can litigate such a charge. See e.g., New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Docket No. A-1263-80T2. This principle is not a mere matter of procedure. To the contrary, it is predicated on the exclusive representation principle, the cornerstone of our Act. See Red

Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 138-139 (1978); Lullo v. International Association of Firefighters, 55 N.J. 409 (1970).

Further, the Commission stated in New Jersey Turnpike Authority,

...A charge must allege a violation of a right of the charging party protected by the statute. Since the right to negotiate is that of the majority representative, not an individual employee or even a group of individual employees, only the majority representative may charge the employer with a violation of the duty to negotiate. [6 NJPER at 561, n. 7]

Based upon the foregoing, I find that Kopanyi and Zimmerman have no standing to pursue a charge alleging that the Township violated subsection 5.4(a)(5) by failing to negotiate in good faith.

Further, an employer does not commit an unfair practice by attempting to resolve disputes. Public policy, as expressed by the courts and the New Jersey legislature, favors such resolution.

N.J.S.A. 34:13A-2; Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974). Consistent with our statutory responsibilities for the "...prevention or prompt settlement of labor disputes...", the Commission strongly advocates the voluntary resolution of labor disputes. North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 82-107, 8 NJPER 314, 315 (¶13141 1982); Red Bank Bd. of Ed., P.E.R.C. No. 87-39, 12 NJPER 802 (¶17305 1986).

The Act grants employee representatives the right to negotiate in good faith with respect to disciplinary disputes. N.J.S.A. 34:13A-5.3. While employees possess certain safeguards against discipline arising from civil service statutes and

regulations, nothing in these regulations prohibits the parties from attempting to resolve disciplinary disputes before employees' invoke their rights to civil service review of discipline.

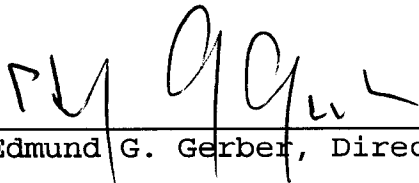
The charging parties also assert that the Township discriminated against them in violation of 5.4(a)(3) of the Act. For such a claim to be actionable before us, the charging parties must assert some nexus between activities protected by the Act and the adverse personnel action. The Charging Parties here do not assert that they were discriminated against in retaliation for any activities on behalf of the union, or because they filed a grievance, or for the exercise of other activity protected by the Act. See N.J.S.A. 34:13A-5.3. Accordingly, the unfair treatment alleged in the Charge has no relationship to the protections afforded employees under the Act, and is not a violation of subsection 5.4(a)(3). See In re Bridgewater Tp., P.E.R.C. No. 82-3, 7 NJPER 434 (¶12193 1981), recon. den. P.E.R.C. No. 82-36, 7 NJPER 600 (¶12267 1981), aff'd App. Div. Dkt. No. A-859-81T2 (6/21/82), aff'd 95 N.J. 235 (1984); Camden Cty. College, D.U.P. No. 91-7, 16 NJPER 523 (¶21229 1990); Essex Cty. Div. of Welfare, D.U.P. No. 85-25, 11 NJPER 439 (¶16150 1985); Edison Bd. of Ed., D.U.P. No. 85-18, 11 NJPER 103 (¶16044 1985).

Finally, charging parties assert that the Township's proposals to reduce their discipline tended to coerce employees and interfere with their statutory rights.

A public employer independently violates subsection (a)(1) of the Act if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Jackson Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988); UMDNJ -- Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1957); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). The charging parties have not asserted conduct which would tend to interfere with their statutory rights.

Based on the all of the foregoing, I do not find that the Commission's complaint issuance standard has been met and I refuse to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: September 1, 1993
Trenton, New Jersey