

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

In the Matter of

BOROUGH OF JAMESBURG,

Respondent,

-and-

DOCKET NO. CI-78-21

CHIEF PETER GIACOMOZZI,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by the Chief of Police which alleges that the Borough refused to continue negotiations with the Charging Party as an employee representative of a negotiations unit consisting of one individual. The New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4(a)(5), states that it is a prohibited practice for a public employer to refuse to negotiate in good faith with a majority representative of employees. The Director finds that collectivity is an underlying principle of the Act and concludes that a negotiations unit consisting of only one individual is inappropriate. Accordingly, a public employer's refusal to negotiate under these circumstances cannot constitute a violation of the Act.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on December 12, 1977, by Police Chief Peter Giacomozzi (the "Charging Party") against the Borough of Jamesburg (the "Borough"). The Charge, as amended on January 5, 1978, alleges that the Borough committed an unfair practice in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(5) ^{1/} when it refused to continue negotiations with the Charging Party, as an employee representative of a negotiations unit consisting of one individual, regarding a successor collective negotiations agreement for the

1/ This subsection prohibits public employers, their representatives or agents from: "(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."

calendar year 1978. As clarified by the January 5 amendment, the undersigned shall consider this Charge as filed by an employee representative, rather than as a Charge filed by an individual. ^{2/} Charging Party alleges that on August 23, 1977, the Charging Party, in accordance with N.J.A.C. 19:12-2.1, filed with the Commission a Notice of Intention to Commence Negotiations, and on September 19, 1977, filed with the Borough a written request for negotiations for a successor agreement. On October 5, 1977, an initial negotiations meeting was allegedly conducted between the Charging Party and members of the Borough Council at which salary and other benefits were discussed. This meeting was adjourned with the understanding that subsequent negotiations sessions would be scheduled by the Chairman of the Borough Council. Despite requests by the Charging Party for continued negotiations, the Borough had not, as of the date of the Charge, engaged in any additional negotiations. ^{3/}

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

^{2/} The amended Charge states: "The charge is being filed by a bargaining agent which is representative of a negotiations unit consisting of one individual."

^{3/} Additionally, the Charging Party has provided the Commission with copies of the alleged previous agreement referred to in the Charge. This agreement consists of a handwritten document, dated January 14, 1976, entitled "Borough of Jamesburg, New Jersey [-] Chief of Police Agreement" and is executed by Borough representatives and the Chief. The Charging Party has also enclosed an unexecuted document entitled "AGREEMENT between the BOROUGH OF JAMESBURG and CHIEF PETER GIACOMOZZI JAMESBURG POLICE DEPARTMENT."

issue a complaint stating the unfair practice charge. ^{4/} 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 party, if true, may constitute an unfair practice within the meaning of the Act. ^{5/} The Commission's Rules also provide that the undersigned may decline to issue a Complaint. ^{6/}

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

In order for the Borough to be found in violation of N.J.S.A. 34:13A-5.4(a)(5) the Charging Party must first demonstrate that, pursuant to the Act, the Public Employer was under an obligation to negotiate with the Charging Party. Subsection (a)(5) provides that it is an unfair practice for a public employer to refuse to negotiate with a majority representative of employees in

^{4/} 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..."

^{5/} N.J.A.C. 19:14-2.1.

^{6/} N.J.A.C. 19:14-2.3.

an appropriate unit. The issue before the undersigned in the instant matter is whether the employer must negotiate with a representative of a "unit" consisting of a single individual.

N.J.S.A. 34:13A-3 grants the right to public employees who comprise an appropriate unit to collectively designate a negotiations representative. Subsection 5.3 provides:

"...The negotiating unit shall be defined with due regard for the community of interest among the employees concerned...

...Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the Commission as authorized by this Act shall be the exclusive representatives for collective negotiations concerning 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 without discrimination and without regard to employee organization membership...."

The Act does not define the term "collective." Webster's New Collegiate Dictionary defines the word "collective" as "denoting a number of persons or things considered as one group or whole; of, relating to, or being a group of individuals." The term "majority

rule" is defined by Webster's as: "a political principle providing that a majority usually constituted by fifty percent plus one of an organized group shall have the power to make decisions binding upon the whole." ^{9/}

It is obvious from the statutory language of § 5.3 that the principle of collectivity underlies the entire Act. ^{10/} Under nearly identical statutory language the National Labor Relations Board ^{11/} has consistently stated that a unit which would be comprised of only one employee is not appropriate since the NLRA requires collective bargaining and the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain. Therefore, the NLRB has concluded that the NLRA does not empower the Board to certify collective bargaining representatives where only one employee is involved. ^{12/}

Accordingly, the undersigned is constrained to find that a unit consisting of one individual is inappropriate since

^{9/} The undersigned notes that the principle of majority rule is incorporated in the Act, at N.J.S.A. 34:13A-5.3, supra, p. 4, and by the Commission's election rules, N.J.A.C. 19:11-1 et seq., to designate or select the majority representative.

^{10/} The N.J. Supreme Court, in the context of a different question, reached this same conclusion. Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970).

^{11/} Lullo also held that, due to the similarity of statutory language with the National Labor Relations Act, the Legislature intended the decisions of the NLRB to be a guide for the administration of the New Jersey Act.

^{12/} Metro-Goldwyn-Mayer Studio, 2 LRRM 1316 (1969); Pacific Car and Foundry Co., 19 LRRM 1329 (1947); Foreign Car Center, Inc., 46 LRRM 1538 (1960); Westinghouse Electric Corp., 72 LRRM 1316 (1969); Chrysler Corp., 78 LRRM 1142 (1971).

it lacks the necessary element of collectivity. ^{13/} Furthermore, since § 5.4(a)(5) defines as a prohibited practice the refusal of an employer to negotiate in good faith with a majority representative ^{14/} of employees in an appropriate unit, the undersigned finds that the Borough has no statutory obligation to negotiate with the Charging Party, and, therefore, the undersigned declines to issue a complaint herein. ^{15/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: September 18, 1978
Trenton, New Jersey

^{13/} The undersigned notes that while other state labor relations agencies in both the public and private sectors have approved units of one individual the language of the Act and the intent of the Legislature as construed by the Court in Lullo, supra, n. 10, dictates the present result. New York State Labor Relations Bd. v. Metropolitan Life Insurance Co., et al., 15 LRRM 650 (1944); International Alliance of Theatrical Stage Employees and Motion Operators of the U. S. and Canada, Loc. No. 218 v. Mogayyu, 12 LRRM 713 (1943); Tetlow Realty Assoc., Inc. v. Building Service Employees Int'l. Union, Loc. 254 (AFL), 18 LRRM 1125 (1946); McDonald and Mahn Motor Co., v. Int'l Assoc. of Machinist, Dist. Lodge No. 104, 21 LRRM 1135 (1947); Our Lady of Angels Church, 1966 MERC (Lob Op 22); Roostertail Inc., 1968 MERC (Lob Op 146); Milwaukee Cty. Dist. Council 48 and Loc. 48 and Loc. 1486 AFSCME v. School Dist. No. 1, Village of Whitefish Bay, WERB, Division No. 6160 (1962).

^{14/} The above analysis also leads to the conclusion that an employer has no statutory obligation under N.J.S.A. 34:13A-1 et seq., to negotiate with the individual who comprises the "one-person unit."

^{15/} Consistent with the NLRB's approach, as stated in Foreign Car Center, supra, n. 12, the undersigned concludes that the Act does not preclude negotiations with an employee organization on behalf of a single employee if an employer is willing. However, the undersigned cannot find that an employer's refusal to negotiate with a representative on behalf of a one person unit could constitute a refusal to negotiate within the meaning of § 5.4(a)(5).