D.U.P. NO. 2002-2

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

In the Matter of

CAMDEN COUNTY BOARD OF
SOCIAL SERVICES,

Respondent,

-and- Docket No. CI-2001-33

TIMOTHY JOSEPH O'NEILL,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Timothy O'Neill, an employee of the Camden County Board of Social Services. The Director finds that the Board did not commit an unfair practice when it implemented an alternate work week policy with the acquiescence of the majority representative. Additionally, O'Neill lacked standing to claim that the the Board violated 5.4a(5) by failing to negotiate in good faith with the majority representative, since the employer's duty to negotiate runs only to the majority representative, not to individual unit members, and since O'Neill did not allege that his own terms and conditions of employment were affected by the extended hours policy.

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Appearances:

For the Respondent,
Neal A. Loebel, attorney

For the Charging Party,
Timothy Joseph O'Neill, pro se

REFUSAL TO ISSUE COMPLAINT

On October 31, 2000, Timothy O'Neill, an employee of the Camden County Board of Social Services (Board), filed an unfair practice charge with the Public Employment Relations Commission. O'Neill alleges that the Board illegally implemented an alternate workweek policy in violation of the collective negotiations agreement in effect between the Board and the Welfare Supervisors Organization (WSO), and in violation of N.J.S.A. 34:13A-5.4a(1),

(2), (3), (5) and (7).[1/] The Board denies violating the Act, and asserts that, as an individual, O'Neill lacks standing to file this unfair practice charge.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. By letter dated August 2, 2001, we advised the parties that we were not inclined to issue a complaint in this matter and we set forth the factual and legal basis upon which we arrived at that conclusion. We invited the parties to respond. No responses were received. Based on the following, I find that the complaint issuance standard has not been met.

1/ These provisions 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. (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.

Timothy O'Neill (Charging Party or O'Neill) is employed by the Camden County Board of Social Services.[2/] The Welfare Supervisor's Organization (WSO) is the majority representative of certain Board employees, apparently including O'Neill. The WSO has a current collective negotiations agreement with the Board which is effective from January 1, 1999 to December 31, 2001. Article 3 of the agreement ("Hours of Work") provides:

> the normal work week shall consist of thirty-five (35) hours per week, seven (7) hours per day, five (5) days per week, Monday through Friday.... The hours of work shall be from 8:30 a.m. to 4:30 p.m., which includes a one hour lunch period."

Beginning June 8, 2000, the Board implemented an alternate work week policy. Under the new policy, the Board extended its hours of operation on Thursdays to 7:30 a.m. to 7:30 p.m. in departments "affecting direct client service." Employees in those departments were given the following Thursday work schedule options: to continue to work from 8:30 to 4:30 with no change in work schedule; to request to work from 11:30 a.m. to 7:30 p.m with no change in the number of hours worked per week; or to request to work from 7:30 a.m. to 7:30 p.m. Employees electing the third option would be entitled to one-half day off for each 12-hour workday. O'Neill works in the Board's mail room, which is not among the departments providing direct client services.

2/ O'Neill's specific job title is unclear from the facts presented; he is apparently assigned to the Board's mail room.

O'Neill filed a grievance with the Board claiming the extended hours policy violated the WSO collective agreement. O'Neill sought to enforce the terms of the existing agreement, as well as to secure overtime compensation for those employees whose workweeks O'Neill claimed violated the collective agreement. On September 21, 2000, the Board's representative denied the grievance, stating that O'Neill did not have standing to grieve on behalf of other employees who opted for the alternative work schedules, as O'Neill's work schedule had not been affected.

At some point prior to September 20, 2000, WSO President John Mojta proposed to the WSO membership that Article 3 of the collective agreement (Hours of Work) be amended to reflect the extended hours policy. Mojta scheduled a membership vote for September 20, 2000. On September 27, 2000, the WSO membership voted to acknowledge the Board's extended hours policy, but stopped short of amending the collective agreement. The acknowledgment stated that the choice to work extended hours was voluntary and that employees choosing extended hours would not be entitled to overtime pay.

ANALYSIS

O'Neill alleges that by implementing the alternate workweek/extended hours policy, the Board altered the agreed-upon terms and conditions of employment and created an atmosphere detrimental to the existence and/or administration of WSO. He further alleges that the terms and conditions of the extended

hours policy are discriminatory, discourage employees from exercising contractual rights, and interfere with employees' rights to a labor agreement bargained in good faith, all of which he alleges are tantamount to "union busting." O'Neill further alleges that the Board and its attorney colluded with the WSO president to "cover up their lack of good judgment" in implementing the extended hours policy; and that the WSO membership conducted an "illegal" vote to amend the WSO collective agreement, with the effect of rendering O'Neill's grievance "null and void." O'Neill alleges that the Board's conduct violated the provisions of 5.4a(1), (2), (3), (5) and (7) of the Act.

The Board responds that none of the facts asserted can support a finding that the Act was violated. The Board maintains that only the majority representative has standing to pursue this unfair practice charge.

N.J.S.A. 34:13A-5.3 gives public employees the right to organize and negotiate collectively. This section of the Act also provides:

> 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.... [T]he majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment....[Emphasis added.]

The requirement that employers and majority representatives negotiate applies at all times, not just during negotiations for a new or successor contract. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48-49 n. 9 (1978). In fact, section 5.3 of the Act requires an employer to negotiate with the majority representative over "[p]roposed new rules or modifications of existing rules governing working conditions." Thus, an employer seeking to change existing terms and conditions of employment during the term of an agreement must first seek to negotiate with the union. Where the issue is contractual, the majority representative may opt to reopen negotiations on the issue or it may decline to do so for the life of the contract. Middlesex Bd. of Ed., P.E.R.C. No. 94-31, 19 NJPER 544 (¶24257 1993), adopting H.E. No. 93-26, 19 NJPER 279 (¶24143 1993). In Middlesex, the Commission observed,

> When collective negotiations agreements are reached, they must be reduced to writing. N.J.S.A. 34:13A-5.3. These written agreements set terms and conditions of employment for the life of the contract, unless the parties mutually agree to change them. [footnotes omitted. Middlesex, 19 NJPER at 545.]

The parties to a collective agreement may at any time jointly agree to modify its terms. State of New Jersey (State Police), I.R. No. 99-9, 24 NJPER 34 (¶30035 1999); Middlesex, 19 NJPER at 545. In fact, we have specifically held that it is not an unfair practice for an employer and the employee representative to agree to negotiate at any time, even mid-contract. Rutherford

Library, D.U.P. No. 2000-17, 26 NJPER 295 (¶31119 2000). That is apparently what has occurred here. The Board sought to implement an alternative work schedule for certain departments; WSO agreed to permit the alternative work schedule. In essence, the parties mutually agreed to modify or suspend application of their contractual work hours provision for this particular circumstance.

That Charging Party is dissatisfied with the WSO's acquiescence to the contract modification and its attempt to obtain membership ratification of the revised work hours, neither constitutes an unfair practice on the part of the Board nor a breach of WSO's duty to fairly represent the employees.

Charging Party did not name WSO as a respondent in this matter, although he appears to claim WSO illegally "colluded" with the Board on the work schedule issue. Even if O'Neill had charged WSO as a co-respondent, I find that WSO's conduct did not breach its duty of fair representation. In Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Federation of Teachers, 142 N.J. Super. 486 (App. Div. 1976), the Court explained the standard to be applied in evaluating a union's conduct in collective negotiations:

> Designation of an exclusive bargaining agent under the New Jersey Employer-Employee Relations Act confers on a union broad power to represent the members of the bargaining unit and to negotiate the terms and conditions of their employment. Along with this power comes the obligation to represent all employees 'without discrimination.' N.J.S.A. 34:13A-5.3.

The Court in Belen adopted the private sector model for assessing the majority representative's negotiations conduct, as found in Ford Motor Company v. Huffman, 345 U.S. 330 (1953),

> The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. [Id. at 338].

The facts presented here do not support a conclusion that WSO's conduct in agreeing to the alternate workweek arrangement violated its duty to fairly represent unit employees.

O'Neill further alleges that WSO conducted an illegal internal vote to amend the collective agreement. There is nothing inherently illegal about an organization soliciting membership ratification of a proposed contract modification. Since the union and the employer do not violate the Act by agreeing to reopen negotiations at any time, it follows that nothing in the Act prohibits the union from seeking membership approval of the change. Moreover, union membership ratification procedures are ordinarily considered internal union matters not within the Commission's jurisdiction. See Teamsters 331 (McLaughlin), P.E.R.C. No. 2001-30, 27 NJPER 25 (¶32014 2001); Camden Cty. Coll. Faculty Ass'n. (Zaleski), D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987).

Additionally, O'Neill lacks standing to claim that the Board violated 5.4a(5) of the Act by failing to negotiate in good faith with the majority representative. Since the employer's duty to negotiate runs to the majority representative, only the majority representative has standing to claim the employer failed

to do so. An individual employee normally does not have standing to assert a 5.4a(5) violation. Camden Cty. Highway Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984); N.J. Turnpike Auth. (Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp.2d 101 (85 App. Div. 1982), certif. den. 91 N.J. 242 (1982). Further, O'Neill, as an individual unit member, does not have standing to contest the parties' application of the collective agreement, since he has not alleged that his own terms and conditions of employment were in any way affected by the extended hours policy. See Trenton Bd. of Ed. and New Jersey Ed. Assn. (Queval), D.U.P. No. 2000-8, 25 NJPER 437 (¶30192 1999).

O'Neill also alleges violations of subsections 5.4a(1), (2), (3), and (7). An employer independently violates 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 26 (¶17197 1986). Here, O'Neill has alleged no conduct by the Board which would tend to interfere with his individual statutory rights. Accordingly, the 5.4a(1) allegation must be dismissed.

O'Neill has also claimed that the Board violated 5.4a(2), which prohibits employer domination or interference with the formation, existence or administration of any employee organization. Employer domination exists when there is pervasive employer control or manipulation of the employee organization

itself. Atlantic Community College, P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986); North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193 (¶11095 1980). There are no facts here which would support a claim that the Board dominated WSO or interfered with its existence.

It is an unfair practice under 5.4a(3) of the Act for an employer to discriminate against an employee because of the employee's activities which are protected by the Act. In re Bridgewater, 95 N.J. 235 (1984). O'Neill's charge raises no such allegations.

Finally, O'Neill alleges a violation of 5.4 a(7), but has not specified any Commission rule or regulation which was allegedly violated.

Based on the foregoing, the Commission's complaint issuance standard has not been met and I decline to issue a complaint on these allegations. N.J.A.C. 19:14-2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Stuart Reichman, Director

DATED: August 22, 2001
Trenton, New Jersey