

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

In the Matter of

LOWER ALLOWAYS CREEK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-81-32

LOWER ALLOWAYS CREEK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to two counts of an unfair practice filed by the Association. Noting that the matters had been fully litigated before an Administrative Law Judge and the Commissioner of Education, the Director determines that further litigation would be contrary to the spirit and holding of Hackensack v. Winner, 82 N.J. 1 (1980), and would not effectuate the policies of the Act.

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Appearances:

For the Respondent
Horuvitz, Perlow & Morris, Esqs.
(John Morris, of counsel)

For the Charging Party
Selikoff & Cohen, P.A.
(John E. Collins, of counsel)

REFUSAL TO ISSUE COMPLAINT

On August 6, 1980, the Lower Alloways Creek Education Association (the "Association"), filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission"), alleging that the Lower Alloways Creek Board of Education (the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. 34:13A-5.4(a) (1), (2), (3) and (5). ^{1/}

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits 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 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 or employees in that unit, or refusing to process grievances presented by the majority representative."

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. 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 and "that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant, legal and factual issues...." ^{2/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{3/}

The charge includes four counts, each count alleging unfair practices with regard to different individuals and events. During the processing of the charges, the parties noted that Counts One and Four were also the subject of an action initiated by the Education Association with the Commissioner of Education. The matter has been referred to the Office of Administrative Law and was the subject of a hearing before an Administrative Law Judge.

In Count One the Association alleged that the Board did not negotiate with the Association concerning a decrease in the number of days per week worked by a part-time speech correctionist, Donna Brooks, represented by the Association, allegedly in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) and further that the unilateral reduction was

^{2/} N.J.A.C. 19:14-2.1

^{3/} N.J.A.C. 19:14-2.3

done in retaliation for her exercise of rights protected by the Act, specifically her role as the Association's negotiations chairperson, allegedly in violation of N.J.S.A. 34:13A-5.4(a)(3). The Association alleged in Count Four that the Association's President, Frederick Kauffman, and Secretary, Sally Smith, received adverse evaluations in retaliation for their exercise of rights protected by the Act, allegedly in violation of §(1), (2) and (3).

Counts Two and Three of the unfair practice charge pertain to separate and distinct allegations and apparently were not the subject of litigation before the Commissioner of Education. These two counts are not considered in this decision, but shall subsequently be reviewed by the undersigned upon request by either of the parties.

By letter dated April 7, 1981 the undersigned advised the parties that a review of the allegations of Counts One and Four indicated that due to the pendency of the hearing at the Office of Administrative Law formal proceedings were not warranted at that time and a decision on whether to issue a complaint should be held in abeyance until the Administrative Law Judge rendered his decision. On October 6, 1981, the Commission received a copy of the Administrative Law Judge's decision, and by letter dated October 19, 1981, the undersigned advised the parties that he would undertake a review of the matter to determine whether or not formal proceedings should be ordered. In that letter the parties were afforded the opportunity to file exceptions to the Administrative Law Judge's findings of fact and conclusions of law and to provide any other reasons why the undersigned should not accept the recommendations of the Administrative

Law Judge. Both sides have now submitted their positions with respect to the significance of the Administrative Law Judge's decision and the Commissioner of Education's subsequent adoption of that decision.

The Association has taken exception to the Administrative Law Judge's findings that the Board was not motivated by anti-union animus in its actions with respect to Ms. Brooks, Mr. Kauffman and Ms. Smith. Additionally, the Association also excepted to the Administrative Law Judge's finding that the reduction of Ms. Brooks' work week from 3 days to 2 days a week was not a violation of N.J.S.A. 34:13A-5.4(a)(5).

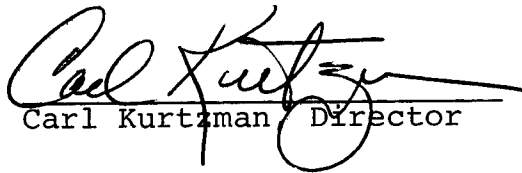
The undersigned has reviewed all the materials submitted, and the Administrative Law Judge's decision and finds that further formal proceedings before the Commission are not warranted with respect to the allegations of these unfair practice charges. See, N.J.A.C. 19:14-2.1(a) and N.J.S.A. 34:13A-5.4(c).

In reaching this conclusion, the undersigned does not necessarily accept each and every finding of fact and legal conclusion made by the Administrative Law Judge; rather, the undersigned is convinced that further litigation of these unfair practice charges would be inconsistent with both the spirit and holding of Hackensack v. Winner, 82 N.J. 1(1980). This matter was fully litigated before the Administrative Law Judge who considered all arguments made by the Association with respect to both the unfair practice allegations and the education law questions. Some, but not all, of the relief requested by the Association in the unfair practice charges has been afforded in the Education proceeding. Additionally, it appears that Ms. Brooks

is no longer employed by the Board and resigned when she had secured full-time employment elsewhere. Given all of these circumstances, it would appear that further litigation of these charges is not warranted and would not effectuate the policies of the Act. See In re Council of N.J. State College Local, E.A. 79, INTPER 39 (1975) aff'd sub-nom State v. Council of N.J. State College Locals, 141 N.J. Super 470 (App. Div. 1976).

For the foregoing reasons, the undersigned declines to issue a complaint with respect to Counts One and Four of the Unfair Practice Charge herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman Director

DATED: February 18, 1982
Trenton, New Jersey