

D.U.P. NO. 92-3

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

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Charging Party,

-and-

Docket No. CE-91-16

IRVINGTON ADMINISTRATOR'S ASSOCIATION,

Respondent.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by the Irvington Board of Education against the Irvington Administrator's Association. The charge alleged that the Association violated N.J.S.A. 34:13A-5.4(b)(2) and (3) when it circulated a letter to a private educational lobbying organization during negotiations. The Director found there were no facts which supported the first charge. He also found that there was no nexus between sending the letter and the negotiations process. Accordingly, the second part of the charge was dismissed.

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Appearances:

For the Charging Party,
Schwartz, Pisano, Simon, Edelstein & Ben-Asher, attorneys
(Nicholas Celso, III, of counsel)

For the Respondent,
New Jersey Principal & Supervisors Association
(Dan Rothermill, Representative)

REFUSAL TO ISSUE COMPLAINT

On March 12, 1991, the Irvington Board of Education ("Board") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Irvington Administrators Association ("Association"). The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(b)(2) and (3) ("Act"),^{1/} when it circulated a letter during contract negotiations.

^{1/} These subsections prohibit public employee representatives, their representatives or agents from: (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; or (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

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 allegations, if true, may constitute unfair practices within the meaning of the Act.^{2/} If this standard has not been met, I may decline to issue a complaint.^{3/}

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

The Board and Association are parties to a collective negotiations agreement which expired on June 30, 1990. Since the expiration of the agreement the parties have engaged in several negotiations sessions, mediation and fact finding. On January 30, 1991 the Association sent a letter to the Executive Director of the Educational Law Center, Inc. requesting certain "missing pages" from an Educational Plan submitted by the Board to the State Department of Education. The letter explains that the Plan had been filed under Quality Education Act guidelines and that the Association had been unable to obtain a complete version from the Board. The letter also indicates the Association's intent to request assistance from certain other named individuals including the State Attorney General, members of the New Jersey legislature and representatives of two newspapers.

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


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

Subsection 5.4(b)(2) prohibits public employee representatives, their representatives or agents from interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. In this case, no facts are alleged which support a finding that the Association interfered with the Board's selection of a representative for collective negotiations. Therefore, I find no violation by the Association of this subsection.

Subsection 5.4(b)(3) prohibits public employee representatives, their representatives or agents from refusing to negotiate in good faith with a public employer. Here, the Board appears to claim that the January 31st letter amounted to a refusal to negotiate in good faith. However, there is no nexus between the content of the letter and the negotiations process. It is not clear how, if at all, the information sought by the Association relates to the parties' negotiations process. It is not clear how, if at all, the act of seeking information interferes or disrupts the parties' negotiations process to such an extent as to amount to an unfair practice. The Board alleges that by sending the letter the Association attempted to secure through intimidation or coercion what it could not obtain through good faith bargaining. It is difficult to see how obtaining information about an educational plan is something which is only to be secured through good faith negotiations. If the Association had a right to the information in order to negotiate the impact of a reorganization, to process

grievances or for any purpose, then it follows that it has a right to attempt to obtain the information. Therefore, I find that the facts stated herein by the Board, even if proven true, do not constitute unfair practices within the Act. Accordingly, this charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: July 19, 1991
Trenton, New Jersey