

D.U.P. NO. 94-18

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

In the Matters of  
COUNTY OF UNION,

Respondent,

-and-

Docket No. CO-94-26

UNION COUNTY PARK FOREMEN'S ASSOCIATION,

Charging Party.

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COUNTY OF UNION,

Respondent,

-and-

Docket No. CO-94-36

UNION COUNTY FOREMEN'S ASSOCIATION

Charging Party.

Synopsis

The Director of Unfair Practices refuses to issue a complaint on allegations that Union County bargained in bad faith by offering two associations a wage package given to other County units and by failing to advise one association that it would not agree to a retroactive agreement. The Director finds that the totality of circumstances, including the number of negotiations sessions held, the County's offers of 14% over three years, the County's willingness to meet further and the charging parties' refusal to use Commission impasse procedures does not warrant the issuance of a complaint. The Director also finds that it is not an unfair practice to propose reduced retroactivity for wage increases, and that this allegation is also untimely.

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Appearances:

For the Respondent,  
Apruzzese, McDermott, Mastro & Murphy, attorneys  
(James L. Plosia, Jr., of counsel)

For the Charging Party,  
Craner, Nelson, Satkin & Scheer, attorneys  
(John A. Craner, of counsel)

REFUSAL TO ISSUE COMPLAINT

On July 21, 1993, the Union County Park Foremen's Association filed an unfair practice with the Public Employment Relations Commission charging Union County with violating

subsections 5.4(a)(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. On August 2, 1993, the Union County Foremen's Association filed an unfair practice charge with the Commission also alleging that the County violated subsections 5.4(a)(1) and (5) of the Act. Both charges allege that the County committed an unfair practice by insisting upon a wage package in the course of bargaining that was identical to that accepted by other bargaining units of County employees. Both Associations characterize the County's stance as an unalterable and firm position from the commencement of the negotiations process.

The Park Foremen's Association also alleges that the County failed to advise it during the course of negotiations that it would not continue its long-standing practice of making the contract retroactive. It asserts that the County's position was dictated by settlements with other County units. The Park Foremen's Association states that it learned that the County would not offer it fully retroactive wage increases on October 20, 1992.

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<sup>1/</sup> 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. (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.

The Park Foremens Association had four negotiations sessions with the County during which the County presented a wage offer of 4% effective November 1, 1992, 2% on April 1, 1993, 3% on November 1, 1993 and 2.5% on January 1, 1994 and September 1, 1994. The Foremens Association had three negotiations sessions with the County, during which it alleges that the County proposed "the same wage package which had been negotiated with all other County employees, namely, April 1, 1993, 2%, November 1, 1993, 3%, etc...". There is no assertion that the County has refused to meet.

The Park Foremens Association's agreement expired in December, 1991 and the Foremens Association's agreement expired in December, 1992. Neither association's members have received wage increases since the expiration of their previous agreements. Both associations allege that the County's actions constitute a refusal to bargain in good faith.

Both Associations' allegations focus upon the County's insistence upon a wage package that was identical to that negotiated with other units of its employees. However, we have held that:

It is well established that the duty to negotiate in good faith is not inconsistent with a firm position on a given subject. "Hard bargaining" is not necessarily inconsistent with a sincere desire to reach an agreement. An adamant position that limits wage proposals to existing levels is not necessarily a failure to negotiate in good faith. In re State of New Jersey, E.D. No. 79, 1 NJPER 39, 40 (1975). aff'd. 142 N.J. Super 470 (App. Div. 1976).

The totality of the parties' conduct must be analyzed to determine whether a party has refused to negotiate in good faith. Both

Associations' allegations focus upon the County's firm position on wage increases. An adamant position on a wage proposal is not necessarily bad faith bargaining. Spotswood Bd. of Ed., P.E.R.C. No. 86-34, 11 NJPER 591 (¶16208 1985).

Further, although both associations base their allegations of bad faith bargaining upon the County's insistence on a county-wide wage package, both also indicate that they have not filed for impasse at any stage in the negotiations process and that they do not wish to avail themselves of the Commission's dispute resolution procedures. There is no indication that the County would refuse to participate in these procedures.

N.J.A.C. 19:14-2.1(a) provides in pertinent part that:

After a charge has been filed and processed, if it appears to the Director of Unfair Practices that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, 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, the Director of Unfair Practices shall issue and cause to be served upon all parties a formal complaint including a notice of hearing.... (emphasis supplied).

It appears that formal proceedings are not appropriate at this time. The Associations' allegations are inconsistent with their refusal to utilize available dispute resolution procedures. The settlement of labor disputes is the core of this Commission's statutory mission<sup>2/</sup> and mediation is an integral part of the

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2/ N.J.S.A. 34:13A-2.

overall negotiations process pursuant to N.J.S.A. 34:13A-6(b).<sup>3/</sup>  
The overall circumstances -- the parties had three or four negotiations sessions; the County has not refused to meet further; the County has made offers totaling approximately 14% over three years and the Associations have declined to use the Commission's impasse processes in an effort to move negotiations along -- do not suggest a refusal to negotiate in good faith and accordingly, do not warrant the issuance of a complaint.

The Park Foremen's Association also alleges that the County committed an unfair practice by failing to advise the Association that it would not agree to a retroactive successor agreement until October, 1992. The duration of a collective negotiations agreement is mandatorily negotiable. Dover Bd. of Ed., P.E.R.C. No. 76-34, 2 NJPER 188 (1976). It is neither improper nor an unfair practice for an employer to propose a mandatorily negotiable subject during the course of bargaining. The Park Foremen's Association's charge states that it was not informed of the County's position on retroactivity until October, 1992. Since the Parks Foremen's Association's charge was filed on July 21, 1993, this allegation appears to fall outside of the six-month statute of limitations for filing unfair practice charges. N.J.S.A. 34:13A-5.4(c). However, even if this allegation were timely, absent other circumstances, it is not an unfair practice for an employer to propose reduced

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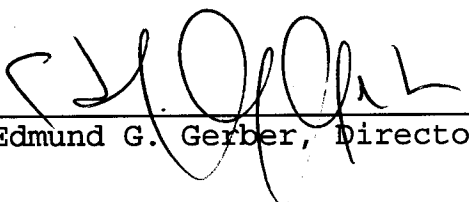
<sup>3/</sup> Brick Tp. Bd. of Ed., H.E. No. 86-17, NJPER Supp. 172 (1985).

retroactivity for wage increases. I also note that the Park Foremen's Association could have filed a notice of impasse upon learning of the County's non-retroactivity proposal in October, 1992, but instead chose to file this charge in July, 1993. Accordingly, this allegation fails to state a violation of the Act and no complaint shall issue on this part of the charge.

Based upon the foregoing, I decline to issue complaints upon these charges and accordingly, the charges are dismissed.

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

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: October 21, 1993  
Trenton, New Jersey