

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

In the Matter of

TOWNSHIP OF CHERRY HILL & F.O.P.,
CHERRY HILL LODGE 28,

Respondent,

-and-

DOCKET NO. CO-80-372

POLICEMENS BENEVOLENT ASSOCIATION OF
NEW JERSEY, CHERRY HILL LOCAL 176,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by a minority employee organization against the employer and the majority representative of employees alleging that the employer was not negotiating in good faith by violating the collective negotiations agreement and that the majority representative was not fairly representing employees by not grieving the alleged violations upon the request of the Charging Party. The Director observes that the determination to initiate a group grievance is the majority representative's prerogative and he notes that the charging party did not assert that the majority representative's refusal to initiate the grievance was discriminatorily directed toward the charging party's members. Since there was no actionable claim of unfair representation against the majority representative, the Director similarly finds no actionable claim against the employer.

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Appearances:

For the Township of Cherry Hill
(Robert Tonczyczn, Police Chief)

For the Fraternal Order of Police
(Robert Hesser)

For the Police Benevolent Association
Trimble and Master, Esqs.
(John W. Trimble, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on June 20, 1980, and amended July 9, 1980 by the Policemans Benevolent Association of New Jersey, Cherry Hill Local #176 (the "PBA") against the Township of Cherry Hill (the "Township") and the Fraternal Order of Police (the "FOP") alleging that the Respondent Township was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,

specifically, N.J.S.A. 34:13A-5.4(a)(5) ^{1/} and that the Respondent FOP was in violation of N.J.S.A. 34:13A-5.4(b)(3). ^{2/}

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. ^{3/} 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. ^{4/} The Commission's Rules provide that the undersigned may decline to issue a complaint

On February 6, 1981 the undersigned wrote to all parties indicating his intent to decline to issue a complaint herein. The Charging Party responded to this correspondence with an additional statement of position which has been considered by the undersigned in rendering this decision.

^{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."

^{2/} This subsection prohibits employee organizations, their representatives or agents from: "(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."

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

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

The FOP is the majority representative of the rank and file police employees; the PBA is a minority representative. The PBA alleges that the FOP has declined to process a grievance presented to it by the PBA. The grievance relates to the temporary assignment of patrolmen to the position of investigator. The PBA alleges that the Township has, in effect, unilaterally promoted two patrolmen to the investigator position, contrary to certain provisions in the FOP contract which set forth criteria for promotions and has thus not negotiated in good faith with the FOP.

Initially, the undersigned notes that the PBA's allegations under §(b)(3) against the FOP are misplaced. If, in fact, the FOP is not responding to grievances presented by unit members, this purported violation of a majority representative's responsibilities is in the nature of an unfair representation claim subsumed under §(b)(1). See, In re Springfield Twp., D.U.P. No. 79-13, 5 NJPER 15 (¶ 10008 1979). Unfair practice claims brought under §(a)(5) and (b)(3) by parties other than the public employer and the majority representative are not actionable since these subsections refer to obligations which the employer and the majority representative mutually and exclusively owe to one another. See, In re Council of N.J. State College Locals, D.U.P. No. 81-8, 6 NJPER 531 (¶ 11271 1980).

The undersigned, however, has indicated that a complaint may issue under the limited circumstances where a §(a)(5) allegation

filed by an individual is coupled with a viable claim of the violation of the majority representative's obligation to provide fair representation under §(b)(1). See, In re N.J. Turnpike Authority, D.U.P. No. 80-10, 5 NJPER 518 (¶ 10268 1979). Whether a violation of §(a)(5), filed by an individual, may be found where a majority representative has unfairly represented employees remains an outstanding question. In re N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶ 11284 1980), appeal pending App. Div. Docket No. A-1263-80T.

The instant matter raises the threshold and primary issue as to whether a minority representative may assert that a majority representative has improperly represented employees by declining to process a grievance raised by the minority representative. The undersigned shall therefore address this issue as if a §(b)(1) charge had been filed.

First, the undersigned observes that under N.J.S.A. 34:13A-5.3, a minority organization may not present or process a grievance to a public employer on behalf of negotiations unit members. By analogy it follows that the majority representative is not compelled to process grievances on behalf of a minority organization simply because the minority organization has made such request upon the majority representative. The initiation of a group grievance on behalf of negotiations unit members is solely within the province of a majority representative.

Second, in the Council of N.J. State College Locals matter, supra, the undersigned declined to issue a complaint with respect

to an unfair practice charge filed by a minority organization against a majority representative claiming that the majority representative was in violation of §(b)(1) by not executing a contract which had been ratified by the membership of the majority representative. In analyzing the allegation of improper representation, the undersigned distinguished between allegations of improper representation affecting all unit members and improper representation of employees attributable to their membership in the minority representative. Similarly, there is no claim herein of discriminatory action on the part of the FOP directed exclusively or primarily to PBA members for the purpose of chilling them in the exercise of their protected activities in support of the PBA. Instead, since the charge indicates that the contested conduct constituted a contractual violation it affected all members of the unit.

Finally, as there is no factual basis in the charge for a claim that the FOP has acted in an arbitrary, discriminatory or bad faith manner, In re N.J. Turnpike Authority, P.E.R.C. No. 80-38, 5 NJPER 412 (¶ 10215 1979), there is no basis to believe that the FOP has declined to pursue a grievance regarding this issue for reasons other than an assessment that the pursuit of a grievance is not in the interest of negotiations unit members. In re Red Bank Bd. of Ed., D.U.P. No. 79-17, 5 NJPER 56 (¶ 10037 1979).

Having concluded that the (b)(3) or even a (b)(1) claim is without merit, the undersigned finds that the (a)(5) claim against the employer does not warrant the issuance of a complaint. If the majority representative has not acted improperly by failing

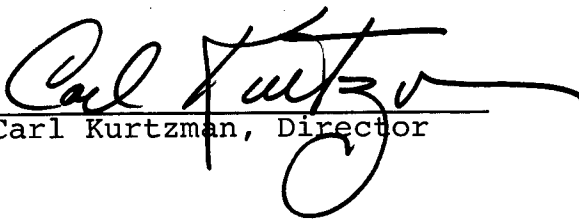
to file a grievance with the employer, surely the employer has not violated (a)(5) by refusing to negotiate on a topic not presented to it. Assuming, arguendo, that the PBA were to present this grievance to the employer, the employer would still be under no obligation to process the grievance. A public employer is obligated under (a)(5) to negotiate with and process grievances presented by the majority representative and owes those obligations to no other. Red Bank Reg. Ed. Assn. v. Red Bank Reg. High Sch. Bd. of Ed. 78 NJ 122 (1978); Hilliard v. Paterson Bd. of Ed., App. Div. Docket A-2783-79 (Feb. 1, 1981).

Lastly, the PBA has alleged that the FOP has provided unfair representation to members by permitting a superior officer to sit in on the negotiating team for the patrolmen. The Charging Party does not assert whether the superior officer merely attended the negotiations session or whether the superior officer negotiated on behalf of the FOP at the session. See In re Borough of Sayreville, D.U.P. No. 78-5, 3 NJPER 395 (1977). Even if the Commission were presented with a factual allegation that a superior officer, who was not a unit member, participated in a negotiations session as a representative designated by the FOP for negotiations, this allegation could not support a PBA claim of unfair representation. While the designation of negotiations representatives may be of concern to FOP membership, the undersigned sees no legal basis under §(b)(1) for a minority organization to question the majority representative's judgment in the selection of its representative. The "conflict of interest", which the PBA claims arises from this action, may relate

to the conflict resulting from the inclusion of superior officers and rank and file personnel in the same negotiations unit. The Act's prohibitions on mixed units of supervisors and non-supervisors are intended to prevent superior officers from being placed in a divided loyalty position which might prevent the proper execution of their responsibilities to management. See, Bd. of Ed. of W. Orange v. Wilton, 57, N.J. 404 (1971). Apparently neither the Township nor the FOP is concerned with such conflict in the context presented. If the membership of the FOP is dissatisfied with its negotiations representatives, the matter is a proper subject for internal union resolution.

Accordingly, for the above reasons, the undersigned declines to issue a complaint with respect to the instant unfair practice charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: May 15, 1981
Trenton, New Jersey