

D.U.P. NO. 92-13

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

In the Matter of

CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-91-297

FMBA LOCAL 6,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the public employer refused to agree to a contract provision giving the majority representative "time and space" to conduct unit business. Although the Director acknowledged that such proposals are generally negotiable, he found that the employer had not committed an unfair practice when it merely did not agree to the proposed provision.

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Appearances:

For the Respondent,
Kelsey, Bitterman & Apicelli, attorneys
(Micheal Bitterman, of counsel)

For the Charging Party,
Joel P. Harris, President

REFUSAL TO ISSUE COMPLAINT

On May 6, 1991, Trenton Local #6, Firemen's Mutual Benevolent Association ("FMBA") filed an unfair practice charge against the City of Trenton ("City") alleging that the City violated subsection 5.4(a)(2)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The FMBA alleges that in contract negotiations, the City would not agree to provide "time and space to administrate unit business" unless it agrees to

^{1/} This subsection prohibits public employers, their representatives or agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization."

certain City-proposed contract terms. The FMBA alleges that other City majority representatives "conduct business on City time, in City space." The FMBA attached a copy of a contract proposal providing "office space" including heat and light, and "16 hours of union business per work schedule."

The City denies that it engaged in any unfair practice. It asserts that it simply did not agree with the FMBA proposal.

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 charged.^{2/} The Commission has delegated its authority to issue complaints to me and has 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 allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{3/}

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

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

The Commission's rules provide that I may decline to issue a complaint.^{4/}

On March 5, 1992, I issued a letter tentatively dismissing the charge. No responses were filed.

Proposals requiring an employer to provide office space in employer-owned buildings are mandatorily negotiable, provided the proposal does not require the expenditure of capital funds. City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985); Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986); City of Garfield, P.E.R.C. No. 90-48, 16 NJPER 6 (¶21004 1989).

The City has not refused to negotiate over the subject of office space - it has refused to agree to the FMBA proposal. Alternatively, the City is willing to provide the space upon condition that the FMBA agrees to its proposals. There is no allegation that the City unilaterally removed office space. Nothing in the 1989-90 collective agreement refers to union office space. The FMBA has a right to investigate grievances "during duty hours", pursuant to Article II.

Inasmuch as the City has simply not agreed to the FMBA negotiations proposal, I decline to issue a complaint.^{5/} "The duty to negotiate in good faith is not inconsistent with a firm

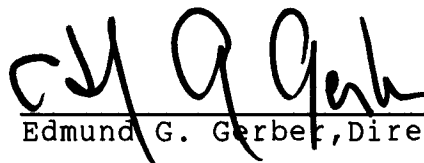
^{4/} N.J.A.C. 19:14-2.3.

^{5/} The FMBA alleged that the City's refusal violates subsection 5.4(a)(2) of the Act. No facts suggest that the City has dominated or interfered with the existence or administration of the FMBA.

position on a given subject. Hard bargaining is not necessarily inconsistent with a sincere desire to reach an agreement." State of N.J., E.D. No. 79, 1 NJPER 39 (1975), aff'd sub nom. State v. CNJSCL, 141 N.J. Super. 470 (App. Div. 1976).

Accordingly, I dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: March 23, 1992
Trenton, New Jersey