

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

In the Matter of
MEDFORD BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-79-175

MEDFORD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge which had been deferred to arbitration. After reviewing the Arbitrator's Opinion and Award, the Director concludes that the arbitrator reached the dispute underlying the Unfair Practice Charge and that the Arbitrator's Opinion and Award did not reach a result which is repugnant to the Act. The issue underlying both the unfair practice and arbitration proceeding was the claim by the Association that the Board president stated at a public meeting that the Association members should remove their chief negotiator.

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Appearances:

For the Respondent
Grotta, Glassman & Hoffman, attorneys
(Joseph J. Malcolm of counsel)

For the Charging Party
Joel S. Selikoff, P. A.
(Joel S. Selikoff of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 10, 1979, by the Medford Education Association (the "Association") against the Medford Board of Education (the "Board") alleging that the Board 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. (the "Act"), specifically, N.J.S.A. 34:13A-5.4

(a)(1), (2) and (3). ^{1/}

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. ^{2/} 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. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

The Charging Party alleges that at a regular monthly Board meeting, which was conducted shortly after the Board had reached agreement with the Association for a teachers contract,

^{1/} These subsections prohibit 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. (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/} 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 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

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

" ... Respondent through its President Robert G. Butterweck issued a statement in verbal form to members of the public in attendance that members of Charging Party should remove their chief negotiator as he has deliberately misled them in recent collective negotiations and that if said chief negotiator were not removed, Respondent might, in the future, refuse to grant anything to members of Charging Party except what is strictly required by the above mentioned negotiated agreement."

During the processing of the Charge, the Board agreed to present the Association's grievance to an arbitrator in accordance with the arbitration provision in their contract. The undersigned advised the Association that the instant dispute presented an appropriate case for the application of the Commission's policy of deferring the resolution of unfair practice charges to the parties' contractual grievance/binding arbitration procedure. Said policy is generally applied where it appears reasonably probable that the dispute underlying the alleged unfair practice will be resolved in the parties' contractual forum. ^{5/} Accordingly, on May 7, 1979, the undersigned deferred the processing of the Charge to arbitration and refused to issue a complaint. At that time, the undersigned also advised the

5/ See Board of Education of East Windsor and Hightstown Education Association, E. D. No. 76-6, 1 NJPER 59 (1975); and City of Trenton and Trenton PBA Local No. 11, P.E.R.C. No. 76-10, 1 NJPER 58 (1975).

parties that the Commission, pursuant to its deferral policy, would retain jurisdiction of the unfair practice charge for the purpose of entertaining an appropriate and timely application for further consideration upon a proper showing that: (a) the dispute has not with reasonable promptness after the issuance of this determination either been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular, or (c) the grievance or arbitration procedures have reached a result which is repugnant to the Act.

On November 29, 1979, an arbitration hearing was conducted and an Opinion and Award issued on January 8, 1980. The arbitrator, after analyzing the facts relating to events described in the Charge, found that the then Board president did not violate the parties' contract.

On February 4, 1980, the Association moved to have the Commission resume the processing of the Charge. The Charging Party asserts that the arbitrator's award is repugnant to the policies which support the Act.

The undersigned has reviewed the arbitrator's award in order to determine whether the dispute underlying the Unfair Practice Charge against the Board has been reached in the grievance forum, and, if so, whether the arbitration procedure reached a result which is repugnant to the Act.

The issue submitted to the arbitrator was:

Did the Board, at its regular meeting held October 11, 1978, violate Article IV, Sections A and B and Article V, Section A of the contract when the Board President, Mr. Robert G. Butterweck, made verbal statements to the public in attendance in regard to the Association's chief negotiator?

The arbitrator considered the issue under the following contractual provisions.

Article IV, Section A:

The parties agree to enter into collective negotiations over a successor agreement in accordance with Chapter 123, Public Laws of 1974, in good faith. Any agreement so negotiated shall apply to all teachers, be reduced to writing, be adopted by the Association and the Board.

Article IV, Section B:

Neither party in any negotiations shall have any control over selection of the negotiating representatives of the other party.

Article V, Section A:

Pursuant to Chapter 123, Public Laws of 1974, the Board hereby agrees that employees shall be protected in the exercise of the right, freely and without fear of penalty or reprisal from person or persons, group or groups to join, form, and assist any employee organization in a legal matter or to refrain from any such activity.

The arbitrator, after finding that as the Board president's statements were made following ratification that day of a new

agreement, concluded that as the time for successor contract negotiations was three years in the future the Board could not be in violation of its responsibility to enter into negotiations with the Association over a successor agreement. Similarly, the arbitrator found that there was no guarantee of who would act as the spokesperson for the Association three years later and the Board, therefore, could not be found to be controlling the selection of the Association's spokesperson. Lastly, the arbitrator found that the Board president's statements did not deprive employees of their right to form, join or assist the Association or to refrain from so doing in any legal matter.

Having reviewed the arbitrator's opinion and award, the undersigned concludes that the arbitrator reached the underlying dispute of the Unfair Practice Charge, and that the result is not repugnant to the Act. The operative event claimed to constitute violations of these individual and organizational rights is the statement of the Board president allegedly seeking the removal of the Association's chief negotiator. The relevant factual proofs could have, and appear to have been, submitted to the arbitrator. See In re State of New Jersey (Kean College), D.U.P. No. 80-3, 5 NJPER 332 (¶ 10178 1979).

The elements of the unfair practices alleged by the Association involve claims of (1) interference with, restraint, or coercion in the exercise of guaranteed rights of individuals to assist an employee representative; (2) domination or interference with the existence or administration of any employee

organization; and (3) refusal to negotiate in good faith. The disposition of these unfair practice elements has been fully satisfied by the arbitrated resolution of the contractual issues. 6/

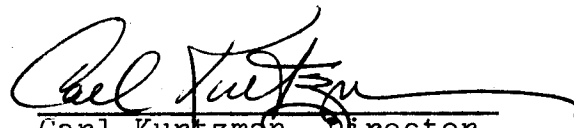
In In re Jersey City Board of Education and Johnson, D.U.P. No. 80-5, 5 NJPER 405 (¶ 10211 1979), the undersigned observed:

Where an arbitrator interprets a contract in a manner which is unfavorable to the grievant and which may, in some instances, differ from an interpretation of another neutral, the result reached is not necessarily repugnant to the purposes of the Act.

Therefore, the undersigned finds that the dispute underlying the Unfair Practice Charge has been reached by the arbitrator in his analysis and determination that the contractual "Negotiation Procedure" and "Rights of the Parties" clauses were not violated. The arbitration proceeding did not reach a result repugnant to the Act.

Accordingly, based on the above, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: March 7, 1980
Trenton, New Jersey

6/ Most importantly, the arbitrator, in concluding that successor negotiations are temporally too remote for the statements to affect the control of the Association's negotiations spokesperson, has not reached a result repugnant to the purposes of the Act.