D.U.P. NO. 94-26

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Charging Party,

-and-

Docket No. CE-92-16

UNITED SALARIED PHYSICIANS AND DENTISTS,

Respondent.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint and Notice of Hearing on a charge filed by a public employer alleging that a majority representative failed to negotiate in good faith and interfered with the employer's choice of negotiations representative, violating subsection 5.4(b)(3) and (b)(2), respectively.

The Director noted that the parties negotiated a successor agreement and that continued litigation "unwisely focuses their attention on a divisive past." The Director determined that the charge is moot.

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Appearances:

For the Charging Party
Carpenter, Bennet & Morrissey, attorneys
(John J. Peirano, of counsel)

For the Respondent
Carol G. Dunham, Associate Counsel

REFUSAL TO ISSUE COMPLAINT

On May 4, 1992, Rutgers University filed an unfair practice charge against the United Salaried Physicians and Dentists ("USPD"), alleging that it refused to negotiate in good faith, violating subsections 5.4(b)(2) and (3)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The University alleges that since on or about November 1, 1991, the USPD

1/ These subsections prohibit employee organizations, 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. (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."

has refused to meet for collective negotiations and aborts those sessions it does attend; that it refuses to present counter-proposals, changes its negotiating team "to the detriment" of negotiations; has refused to "recognize the authority" of its (the University's) chief negotiator and has directed its members to refuse to perform certain job duties until various issues are settled in negotiations.

The charge also states that on or about October 10, 1991, a Notice of Impasse had been filed with the Commission.

This matter was pended, upon request of the USPD and the agreement of the University, while the parties engaged in fact finding and other negotiations after the Notice of Impasse was filed.

The USPD later filed a letter denying it engaged in any unfair practice. It asserts that the parties, in the course of negotiations "agreed" they were at impasse and initiated mediation and fact finding. On November 13, 1992, the parties signed a collective agreement covering from July 1, 1990 to July 20, 1994.

The USPD contends that the agreement reached after "impasse" is a waiver of the University's "position" that it engaged in bad-faith bargaining. It contends, alternatively, that the charge is moot, since its processing would not effectuate the purposes of the Act and does not meet Complaint issuance standards. N.J.A.C. 19:14-1.3. It asserts that if the University believed that it intended to "go through the motions" of reaching an agreement,

the initiation of mediation was a futile gesture. Finally, the USPD asserts that the charge fails to allege sufficient facts upon which a Complaint may issue.

The University filed a letter rebutting the USPD's position and requesting that a Complaint and Notice of Hearing be issued.

In Ramapo-Indian Hills Ed. Assn., P.E.R.C. No. 91-38, 16 NJPER 581 (¶21255 1990), the Commission dismissed a Complaint based on a charge that a majority representative tried to pressure the public employer into acceding to negotiations proposals and that the membership "voted to stop volunteering" and therefore, did not attend school functions. The Commission stated:

> We have often held that the successful completion of contract negotiations may make moot disputes over alleged misconduct during negotiations. We have so held irrespective of whether the charging party is a majority representative or a public employer. Continued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future. See, e.g., Bayonne Bd. of Ed., P.E.R.C. No. 89-118, 15 NJPER 287 (¶20127 1989), aff'd App. Div. Dkt. No. A-4871-88T, (3/5/90); Belleville Bd. of Ed., P.E.R.C. No. 88-66, 14 NJPER 128 (¶19049 1988), aff'd App. Div. Dkt. No. A-3021-87T7 (11/23/88); Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd App. Div. Dkt. Nos. A-46-87T1, A-2433-87T1, A-2536-87T1 (1/24/90); Rutgers, the State Univ., P.E.R.C. No. 88-1, 13 NJPER 631 (¶18235 1987), aff'd App. Div. Dkt. No. A-174-87T7 (11/23/88); State of New Jersey, P.E.R.C. No. 88-2, 13 NJPER 634 (¶18236 1987); State Bd. of Higher Ed., P.E.R.C. No. 84-69, 10 NJPER 27 (¶15016 1983); Oradell Bor., P.E.R.C. No. 84-26, 9 NJPER 595 (¶14251 1983); Rockaway Tp., P.E.R.C. No. 82-72, 8 NJPER 117 (¶13050 1982); Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 79-90, 5 NJPER 229 (¶10126 1979); see also

> Asbury Park Bd. of Ed. v. Asbury Park Ed. Ass'n, 155 N.J. 76 (App. Div. 1977). Under all the circumstances, this case does not warrant an exception to our reluctance to resurrect pre-contract negotiations disputes. (16 NJPER at 581, 582).

The Commission has acknowledged that subsequent consummation of a collective agreement does not always moot an unfair practice charge concerning a prior refusal to negotiate. See State of New Jersey, P.E.R.C. No. 88-2, 13 NJPER 634 (¶18236 1987). An exception lies in those cases where "there is a sufficient potential for recurrence of [the offending] conduct." Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978); State of New Jersey.

I do not believe that such considerations are present here. The gravamen of the charge is that the USPD refused to negotiate in good faith; yet the parties determined to rely on Commission procedures to reach a collective agreement. They evidently narrowed their differences in the process, signing an agreement in November 1992. Continued litigation would only increase instability and hostility between the parties. See Matawan-Aberdeen Reg. Schl. Dist., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987). Accordingly, I dismiss the allegation that the USPD violated subsection 5.4(b)(3) of the Act.

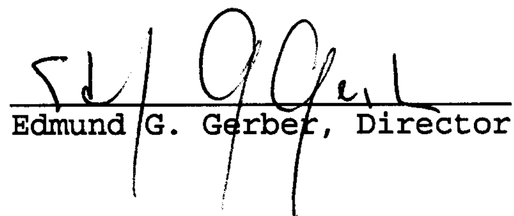
In order to establish a violation of 5.4(b)(2) of the Act, a charging party must establish a "coercive pattern of union conduct designed to interfere with the employer's choice of representative for purposes of collective bargaining." Downe Tp. Bd. of Ed.,

P.E.R.C. No. 86-66, 12 NJPER 2 (¶17002 1985). In Downe Tp., the Commission dismissed the charge, finding that although a union negotiator expressed dissatisfaction with meeting with an employer negotiator, it was in the context of expressing dissatisfaction with an "informal" negotiations agenda.

The University's allegation that the union refused to "recognize" the "authority" of its chief negotiator and "expressed" an unwillingness to meet with her is not a sufficient factual basis upon which a Complaint may issue. The University did not specify when or what "authority" was refused. Furthermore, the USPD participated in the Commission impasse procedures and negotiated an agreement, adequately undermining any "expression" to the contrary.

Finding that the charge does not meet standards necessary to issue a Complaint (N.J.A.C. 19:14-2.3), I dismiss it in its entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: February 2, 1994
Trenton, New Jersey