

D.U.P. NO. 2024-16

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

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2024-113

AFSCME LOCAL 2262,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by AFSCME Local 2262 against the Jersey City Board of Education (Board). The charge alleges that the Board violated sections 5.4a(1), (2), and (5) of the New Jersey Employer-Employee Relations Act (Act) by adopting a resolution to enter into an agreement with the Hudson County Building and Trade Council Labor Union to perform the work of AFSCME Local 2262.

The Director found that Chapter 79, which restricts a school district's ability to subcontract, was not violated because no bargaining unit employees were affected in any way.

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Appearances:

For the Respondent,
Adams, Lattiboudere, Croot, & Herman, attorneys
(John E. Croot, of counsel)

For the Charging Party,
AFSCME Local 2262
(LaKeisha Jenkins, President, Local 2262)

REFUSAL TO ISSUE COMPLAINT

On January 26 and 30, 2024, AFSCME Local 2262 (AFSCME) filed an unfair practice charge and an amended charge, respectively, against the Jersey City Board of Education (Board). The amended charge alleges that the Board adopted a resolution which authorizes the district to utilize members of the Hudson County Building and Trade Council Labor Union (HCBT)^{1/} to perform the work of AFSCME. The charge further alleges that this resolution was voted on without discussing it with AFSCME leadership. Finally, AFSCME alleges this agreement will affect AFSCME members

^{1/} HCBT members are not Board employees.

financially by impeding their ability to work overtime. AFSCME contends that the Board's actions violated sections 5.4a(1), (2), and (5)^{2/} of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq.

On March 7, 2024, the Board filed and served upon AFSCME a position statement. According to the Board, there currently exists a shortage of qualified trades people needed to service the district.^{3/} As a result, the Board entered into an agreement with HCBT to perform emergent repairs and construction work that AFSCME members are unable to accomplish because of the lack of qualified employees. Furthermore, the Board did meet with AFSCME leadership and discussed the arrangement, in detail, in September 2023. The Board maintains that no AFSCME member will be impacted financially, or otherwise, as a result of this temporary arrangement. Consequently, the Board denies that it violated the Act.

^{2/} These provisions 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; and (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."

^{3/} According to the Board, there are currently twenty six (26) vacancies for trades positions, including but not limited to plumbers, laborers, carpenters, painters, and supervisors. Eleven (11) positions are currently posted.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute unfair practices on the part of the respondent.

N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I will decline to issue a complaint. N.J.A.C. 19:14-2.3.

I find the following facts.

The Board is a public employer within the meaning of the Act. AFSCME is the majority representative for a variety of blue collar employees, including but not limited to, custodial workers, electricians, plumbers, and maintenance employees employed by the Board. The Board and Association are parties to a collective negotiations agreement (CNA) extending from July 1, 2021 through June 30, 2024.

In October 2023, LaKeisha Jenkins (Jenkins) was elected to serve as the new AFSCME President. A month prior, in September 2023, the Board met with AFSCME leadership to discuss plans for HCBT to perform emergent repairs and construction work on a number of the Board's forty-five (45) buildings.^{4/} Jenkins did not attend the meeting and admittedly does not know what was

^{4/} Jenkins does not dispute that this meeting took place.

discussed or agreed to at the meeting.^{5/} The Board maintains that the prior AFSCME leadership approved of the relationship with HCBT at the September meeting. On December 14, 2023, the Board passed a resolution approving the temporary use of HCBT employees to supplement the skills of the existing workforce. The term of the agreement is for one hundred eighty (180) days, which lasts approximately until the end of the current school year. The Board maintains that no AFSCME employee will be replaced, displaced, or impacted financially, or otherwise, as a result of the arrangement with HCBT. To date, the Board has not yet engaged HCBT to perform any work on any of the district's buildings.

ANALYSIS

Generally, a public employer's decision to subcontract unit work is not mandatorily negotiable.^{6/} City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998); Local 195, IFPTE v. State, 88 N.J. 393 (1982). "Subcontracting and the unit work doctrine may have similar consequences, but the former is not

^{5/} Jenkins has no communication with the prior AFSCME leadership.

^{6/} In cases where a public employer subcontracts with a different public employer, the Commission will apply the Local 195 balancing test to determine whether the decision to transfer work to the employees of another public employer is mandatorily negotiable. See Union Cty., P.E.R.C. No. 2010-82, 36 NJPER 183 (¶67 2010); Hudson Cty., *supra*; and Middletown Tp. Bd. of Ed., P.E.R.C. No. 2000-24, 25 NJPER 429 (¶30189 1999).

negotiable while the latter is, depending on the circumstances.”

Ocean Tp., P.E.R.C. No. 2011-90, 38 NJPER 72, 75 (¶15 2011).

However, Chapter 79, N.J.S.A. 34:13A-44 to -49, became effective on September 11, 2020 and amended the Act by placing certain restrictions on a school district’s ability to subcontract work.

Under N.J.S.A. 34:13A-46, an employer is prohibited from entering into a “subcontracting agreement which affects the employment of any employees” in a unit represented by a majority representative during the term of an existing CNA. When a CNA expires, an employer may only subcontract if, at least 90 days prior to soliciting subcontracting bids, it “[p]rovides written notice to the majority representative of employees in each collective bargaining unit which may be affected by the subcontracting agreement” and the Commission, and offers to meet and consult with the majority representative and negotiate over the impacts of subcontracting. N.J.S.A. 34:13A-46(a)-(b). N.J.S.A. 34:13A-46(a)-(b). A school district that violates any of the subcontracting provisions of the Act is deemed to have committed an unfair practice. N.J.S.A. 34:13A-48.

The Commission recently found that a board’s decision to subcontract was non-negotiable, and sustained my refusal to issue a complaint on an unfair practice charge filed by a majority representative. Vineland Board of Education, P.E.R.C. No. 2024-47, 50 NJPER 406 (¶99 2024). In Vineland Board of Education, the

Commission rejected the Association's assertion that the subcontracting limitations of N.J.S.A. 34:13A-46 applied, even though only vacant positions were filled and no current unit employees were displaced. In doing so, the Commission thoroughly analyzed the legislative history of the statute and concluded that N.J.S.A. 34:13A-46 is intended only to restrict subcontracting that affects the employment of an employer's current represented employees, such as through replacement or displacement. Vineland Board of Education, P.E.R.C. No. 2024-47, 50 NJPER 406 (¶99 2024)

I therefore dismiss AFSCME's 5.4a(1) and (5) charges alleging that the Board failed to negotiate in good faith when it passed a resolution to subcontract certain trades work with HCBT. AFSCME has not made any allegations in its charge that any of its members have suffered loss of employment, hours, or opportunities as a result of the Board's decision to enter into a subcontracting agreement with HCBT. This is understandable, considering that such an allegation is not possible to make at this time because HCBT has not performed any work in the district yet. The Association also provided no specific allegation that it demanded to negotiate any potential negotiable impacts or that

the Board refused to negotiate any such issues.^{7/} New Jersey State Judiciary, D.U.P. No. 2022-8, 48 NJPER 344 (¶77 2022).

Finally, subsection 5.4a(2) of the Act prohibits public employers from dominating or interfering with the formation, existence or administration of any organization. Commission cases dealing with 5.4a(2) claims generally involve organizational rights or the actions of an employee with a conflict of interest caused by his membership in a union and his position as an agent of an employer. Union Cty. Reg. Bd. of Ed., P.E.R.C. No. 76-17 2 NJPER 50 (1976); Middlesex Cty. (Roosevelt Hospital), P.E.R.C. No. 81- 129, 7 NJPER 266 (¶ 12118 1981); Camden Cty. Bd. of Chosen Freeholders, P.E.R.C. No. 83-113, 9 NJPER 156 (¶14074 1983). The Commission has held that the type of activity prohibited by 5.4a(2) is "pervasive employer control or manipulation of the employee organization itself." North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶ 11095 1980). No facts have been alleged demonstrating that the Board dominated or interfered with the formation, existence or administration of the employee organization. Therefore, I decline to issue a Complaint on the a(2) allegation.

^{7/} To the contrary, the Board met with AFSCME in September 2023 to discuss the subcontracting plan in detail.

For all of the reasons set forth above, I find that the Commission's complaint issuance standard has not been met and decline to issue a complaint on the allegations of this charge.

ORDER

The unfair practice charge is dismissed.

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Director of Unfair Practices

DATED: May 22, 2024
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3. See N.J.A.C. 19:14-2.3(b).

Any appeal is due by June 3, 2024.