

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

In the Matter of

JAMESBURG BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-79-325

JAMESBURG EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to that portion of an Unfair Practice Charge alleging that the employer interfered with protected rights under the Employer-Employee Relations Act when it reprimanded teachers who utilized students to carry home to parents a flyer containing Association views. The Director cites a previous Commission decision, In re Manalapan-Englishtown Regional Board of Education, P.E.R.C. No. 78-91, 4 NJPER 262 (¶ 4134 1978) in which the Commission determined that this mode of communication was not protected activity under the Act.

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Appearances:

For the Respondent  
Rubin, Lerner & Rubin  
(David B. Rubin, of Counsel)

For the Charging Party  
Stephen E. Klausner, Esq.

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on June 4, 1979, and amended on November 9, 1979, by the Jamesburg Education Association (the "Association") against the Jamesburg 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), (3) and (5). <sup>1/</sup>

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. <sup>2/</sup> 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. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

<sup>1/</sup> These subsections prohibit employers, their representatives and agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act. (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."

<sup>2/</sup> 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 ... "

<sup>3/</sup> N.J.A.C. 19:14-2.1

<sup>4/</sup> N.J.A.C. 19:14-2.3

The Association is the exclusive representative of the Board's teaching staff. The Association has alleged an unfair practice in three "Counts". Count One states that the employer reprimanded employees due to the distribution of a flyer and placed copies of the reprimand in the employee's files. The flyer allegedly was distributed by individual teachers to their pupils with instructions to present the flyer to the pupils' parents. The Association claims that the reprimands are an improper interference with protected rights under the Act.

Count Two of the Charge states that the Board singled out the Association's President for the distribution of the flyer. At a grievance hearing the Board declined her request for the names and addresses of her "accusers". The Association claims that the Board's action has created a "fear of reprisal" and has prevented members of the unit from filing grievances.

Count Three relates to a letter from the Superintendent which was placed in the Association President's personnel file. The letter concerned the President's absence from a classroom. The Charging Party asserts that by this action, the Board "has failed and refused to negotiate this new term and condition of employment, i.e., obtaining prior permission of the administration before going to the lavatory." The Association charges that "no other teacher needs prior administrative approval to use the facilities." The Association also asserts that "this letter

has had a substantial chilling effect upon [the President] and the bargaining unit as a whole."

The undersigned is satisfied that the Commission's standards for the issuance of a complaint have been met with respect to Counts Two and Three, i.e., the facts, if true, may constitute a violation of the Act and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. Therefore, the undersigned has caused the issuance of a Complaint and Notice of Hearing with respect to Counts Two and Three of the Unfair Practice Charge.

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met with respect to Count One.

The Commission has previously considered issues related to the utilization of pupils as a vehicle to communicate Association views to parents. See Manalapan-Englishtown Regional Board of Education, P.E.R.C. No. 78-91, 4 NJPER 262 (¶ 4134 1978). In Manalapan-Englishtown, the exclusive representative distributed letters to its members with instructions to have classroom pupils take home those letters to parents. The letter outlined the representative's position in a labor dispute with the board concerning changes in the parent-teacher conference system. The Commission found that the exclusive representative was not engaged in protected activities under the Act when it utilized

this mode of communication for the dissemination of the representative's views.

The Association herein seeks to distinguish the Manalapan-Englishtown matter and the circumstances involved in the instant Charge. The Association's position is that Manalapan-Englishtown relates to the issue of communicating labor relations materials through pupils. The Association asserts that the material distributed by its members relates solely to the education of the students and not to labor relations. More specifically, the Association states that its flyer, which concerned the lack of heat in classrooms, "revolved around health and safety of both students and teachers."

First, the undersigned cannot accept the limitation which the Association would seek to place on the Commission's Manalapan-Englishtown holding. The thrust of the Commission's decision in Manalapan-Englishtown is that the utilization of pupils as the vehicle to communicate a representative's views is not a protected activity. Thus, the Commission's initial concern is the mode of communication, and not the subject matter of the communication. Accordingly, whether the Association was concerned with educational policy or labor relations matters, its use of pupils to communicate to parents and the public was beyond protected activity.

Second, the undersigned cannot accept the Association's claim that the subject matter of its flyer relates solely to

education and not labor relations. The Association asserts that the matter at issue between the Association and the Board involved the health and safety of students and teachers. As it relates to teachers, these matters concern terms and conditions of employment. While the flyer frames the dispute in terms of the conditions affecting pupils, <sup>5/</sup> the flyer focuses attention upon the dispute between the Association and the Board, states that the Association has "gone 'through channels' without success," and requests the "cooperation" of parents. <sup>6/</sup> Without belittling the concern that the Association expresses on behalf of pupils, the undersigned concludes from the above that the flyer relates to a labor relations dispute between the Board and the Association.

5/ The flyer states as follows:

JAMESBURG EDUCATION ASSOCIATION

For two consecutive days, (Friday and Monday), there has been no heat in our classroom. This is not the first time it has happened, and probably won't be the last.

We are concerned about our children! We can't tolerate this situation. We have gone "through channels" without success. We are, therefore, asking for your cooperation.

Please call the Superintendent, Mr. Kaniper at 521-0303. Please tell him that you don't want your children doing school work with their coats, hats and mittens on - that in this day and age your children are entitled to heat in their classroom.

You might want to ask why boiler repairs were not made over the weekend!

6/ The Association presented a "class action grievance" concerning the lack of heat.

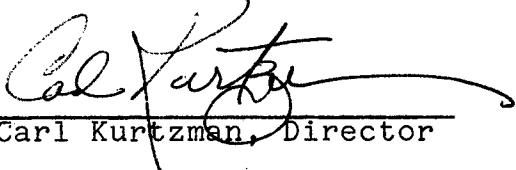
The Association states that the Board herein does not have a policy forbidding the distribution of letters in this manner. The Association asserts that a factor in the Commission's Manalapan-Englishtown decision was that the Board therein had a policy forbidding distribution of letters. However, in Manalapan-Englishtown, the Board's "policy" was made known to the representative when the Board became aware of the imminent distribution of the letter. There is no assertion here that the Association alerted the Board to the contents of its flyer or that the Board was aware of the flyer's imminent distribution and acquiesced. The Charge alleges that the Board changed a past practice by insisting "that it has an absolute right to censor any and all matters being distributed" by teachers. A difference must be observed between those notices sent home to parents by teachers in their instructional capacity and those notices sent home at the behest of the exclusive representative. In the first capacity, teachers are acting on behalf of the school administration in their official employment relationship. There is no factual proffer herein indicating that the Board may have had a past practice of permitting pupils to carry home official Association notices, let alone without prior review.

From the above, the undersigned concludes that Association members were not engaging in protected activities under the Act when they utilized students to communicate Association views to parents. Therefore, the Board was not interfering with the exercise of protected rights when it reprimanded unit members.



Accordingly, the undersigned declines to issue a complaint with respect to Count One of the Unfair Practice Charge.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Carl Kurtzman, Director

DATED: January 7, 1980  
Trenton, New Jersey