

D.U.P. NO. 95-37

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

In the Matter of

MIDDLESEX BOROUGH BOARD OF EDUCATION,  
Respondent,

-and-

Docket No. CI-95-73

MIDDLESEX ADMINISTRATORS & SUPERVISORS  
ASSOCIATION,  
Respondent,

-and-

BEATRICE M. BRUNO,  
Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge filed by Beatrice M. Bruno against the Middlesex Borough Board of Education and the Middlesex Administrators and Supervisors Association. The charge alleged that the Board violated 5.4(a)(1), (3) and (5) of the Act and that the Association violated 5.4(b)(1) and (3) when the parties executed an agreement which failed to provide for a retroactive salary increase for former employee Bruno.

The Director finds that it is not unlawful for an employee organization to negotiate an agreement which restricts retroactive benefits to current unit employees. Further, he finds that the Board was under no obligation to provide former employee Bruno a retroactive increase, where the parties failed to provide for such increase in the agreement.

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Appearances:

For the Respondent,  
Middlesex Borough Board of Education  
Rand, Algrier, Tosti & Woodruff, attorneys at law  
(Russell J. Schumacher, of counsel)

For the Respondent,  
Middlesex Administrators & Supervisors Association  
New Jersey Principals and Supervisors Association  
(Wayne J. Oppito, of counsel)

For the Charging Party,  
Rottkamp & Flacks  
(Robert B. Rottkamp Jr., of counsel)

REFUSAL TO ISSUE COMPLAINT

On May 4, 1995, Beatrice M. Bruno filed an unfair practice charge with the Public Employment Relations Commission against the Middlesex Borough Board of Education and the Middlesex Administrators & Supervisors Association. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3)

and (5)<sup>1/</sup> and that the Association also violated the Act, specifically subsections 5.4(b)(1) and (3)<sup>2/</sup> when the parties executed an agreement which failed to provide for a retroactive salary increase for former employee Bruno for the 1993-1994 school term, although Bruno was a member of the Association and an employee of the Board during that time.

Bruno claims that the Association, as the bargaining representative, owes a duty to represent all its members equally and fairly and that the Board owes a duty to negotiate with the Association and to compensate all employees equally. She asserts that the parties should have negotiated a retroactive salary increase for her, as it did for other unit employees who were employed during the 1993-1994 school term, even though her

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<sup>1/</sup> These subsections 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. (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> These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (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."

employment with the Board ended July 1, 1994, months before the parties executed the agreement on November 4, 1994.

The Association claims that it did the best it could in negotiations and that it executed an agreement that it felt was best for the majority of its members. Unfortunately, according to the Association, it did not provide for a retroactive increase for Bruno, because her employment with the Board had ceased by the time the agreement was executed.

The Board, citing In the Matter of the Borough of Somerville and Somerville PBA Loc. 147, P.E.R.C. No. 84-90, 10 NJPER 125 (¶15064 1984), asserts that the fact that the parties did not include an increase for Bruno in the agreement does not constitute an unfair practice. It claims that the determination that Bruno would not receive any increase pursuant to the 1993-1994 agreement was a result of the negotiations of the parties.

#### ANALYSIS

A majority representative must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967).

The New Jersey Supreme Court in Lullo v. IAFF, 55 N.J. 409 (1970), relying on federal decisions interpreting the National Labor

Relations Act, endorsed the duty of fair representation principle set forth in Vaca. The Court stated that, while the exclusive representative has the sole right to negotiate a contract for all unit employees,

...the right to do so must always be exercised with complete good faith, with honesty of purpose and without unfair discrimination against a dissident employee or group of employees. (55 N.J. at 427, 428) (Emphasis added).

Here, the Association did not act inconsistently with the standard for the duty of fair representation for contract negotiations. In Ford Motor Co. v. Huffman, 346 U.S. 330 (1953), the Court stated:

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. Ford Motor Co., at 338.

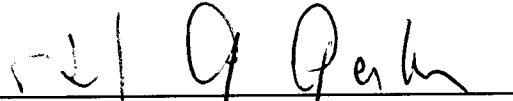
Thus, absent evidence of bad faith or fraud, unions may make compromises which adversely affect some members of a negotiations unit and result in greater benefits for other members. The fact that a negotiated agreement results in less than complete satisfaction for one member of the unit does not establish a breach of the union's duty of fair representation. Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976); Lawrence Tp. PBA,

Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15073 1983); Union City and F.M.B.A., P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982); Hamilton Tp. Ed. Assn., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978).

While Bruno may believe that the Association acted unlawfully by not securing an increase for her, we do not find anything illegal in the Association's actions. It is neither uncommon nor unlawful for an employee representative to negotiate an agreement which restricts retroactive benefits to current unit employees. See Sayreville Municipal Supervisors Association, D.U.P. No. 94-3, 19 NJPER 430 (¶24195 1993), Mercer Cty., D.U.P. No. 92-19, 18 NJPER 297 (¶23126 1992).

Moreover, no facts have been alleged which show the Board acted unlawfully with respect to Bruno. The Board was under no obligation to provide former employee Bruno a retroactive increase, where the parties failed to provide for such increase in the agreement. See Borough of Somerville.

Based on the above, I find that the Commission's complaint issuance standard has not been and I decline to issue a complaint on the allegations of the charge. Accordingly, the charge is dismissed.

  
Edmund G. Gerber  
Director of Unfair Practices

Dated: June 26, 1995  
Trenton, New Jersey