

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

In the Matter of

BURLINGTON COUNTY SPECIAL SERVICES  
TEACHERS ASSOCIATION,

Respondent,

-and-

DOCKET NO. CE-81-3

BURLINGTON COUNTY SPECIAL SERVICES  
BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by the employer alleging that the majority representative interfered with the employer's selection of its representative for the adjustment of grievances by arguing at a public meeting before the Board in favor of the presentation of a grievance to arbitration. The Director finds that the employee representative was exercising rights protected under the Act by raising the issue at a public Board meeting. The Director further concludes that, inasmuch as the Board had declined to submit the grievance to arbitration and the Board was the final step short of arbitration in the grievance procedure, the Association was not interfering with the Board's designated representative for the adjustment of grievances.

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Appearances:

For the Respondent  
Selikoff & Cohen, attorneys  
(Steven R. Cohen of counsel)

For the Charging Party  
Parker, McCay & Criscuolo, attorneys  
(Stephen J. Mushinski of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on July 23, 1980, by the Burlington County Special Services Board of Education (the "Board") against the Burlington County Special Services Teachers Association (the "Association") alleging that the Association 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(b)(1), (2) and (3). <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 rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

<sup>1/</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. (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."

<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 ... "

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

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

The Board's charges relate to activities engaged in by the Association's representatives in support of the processing of a grievance to advisory arbitration. The Board states:

... The Association, through its President Mr. Gibson, and through other representatives of the Association, appeared at the meeting of the Board of Education on May 28, 1980 specifically concerning the issue of the aforesaid grievance. The President of the Association interrupted the Board meeting and proceeded in public session to discuss the confidential issues concerning the grievance and attempted to intimidate the Board of Education concerning its position on the grievance. The Association demanded that a discussion between the Board of Education and the Association be held with respect to the grievance despite the fact that a Petition for Scope of Negotiations Determination has been filed, as well as a Demand for Arbitration having been filed by the Association.

The Petition for Scope of Negotiations Determinations referred to by the Board sought restraints of an advisory arbitration proceeding on the asserted ground that the subject matter was non-negotiable. On June 20, 1980, the Commission denied the Board's request for an order temporarily restraining and enjoining advisory arbitration of the pending grievance. The Board did not appeal that decision. <sup>5/</sup>

The Commission has previously addressed the issue of the right of association representatives to speak to

<sup>5/</sup> On August 10, 1980, the Board withdrew its Petition for Scope of Negotiations Determination.

association matters at a public meeting of the Board, and stated:

... it is the intent of the Act to protect public employees in their proper activities in support of their majority representatives. This includes activities designed to inform the public of their view of a particular dispute or issue as well as their activities at the negotiating table. Similarly a public employer is not prohibited from proper activities designed to inform the public of its reasons for a particular position. 6/

It appears that the Association's activities were well within its rights. Having taken a position that the grievance related to a management policy and could not proceed to advisory arbitration, a position of questionable validity in light of Bd. of Ed. of Tp. of Bernards v. Bernards Tp. Ed. Assn., 79 N.J. 311 (1979), the Board could expect that the Association would seek to convince the Board to change its mind.

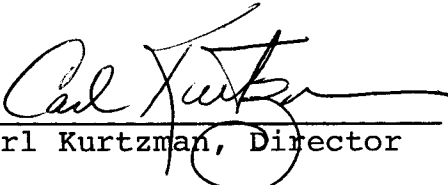
Under the collective negotiations agreement the Board is the highest level of the grievance procedure short of advisory arbitration. The Association was addressing its position to the Board. Thus, the Board has not demonstrated a basis for the claim that by its actions the Association was interfering with the Board's selection of its representative for purposes of the processing of grievances.

6/ Laurel Springs Bd. of Ed., P.E.R.C. No. 78-4, 3 NJPER 228 (1977).

Subsequent to the filing of the instant Unfair Practice Charge, by letter dated December 5, 1980, the undersigned informed the Board that in the absence of an amended Charge containing factual allegations which, if true, may constitute an unfair practice, or the withdrawal of the instant Unfair Practice Charge, the undersigned would be inclined to dismiss the Charge. The undersigned has not received a reply to the December 5, 1980 letter, nor has the Charge been amended or withdrawn as requested.

Accordingly, for the above reasons, the undersigned hereby dismisses the instant Charge.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Carl Kurtzman, Director

DATED: December 30, 1980  
Trenton, New Jersey