

D.U.P. NO. 89-10

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-

JERSEY CITY EDUCATION ASSOCIATION,

Docket Nos. CI-89-32, CI-89-33

Respondent,

-and-

WALTER McDERMOTT, ET. AL.

Charging Parties.

SYNOPSIS

The Director dismisses an unfair practice charge which alleges that the Respondent Board and the Respondent Association discriminated against charging parties (attendance officers) by negotiating a lower salary guide for them than teachers. The Director found no facts alleged which would implicate the Respondents' actions as arbitrary, discriminatory or in bad faith.

Additionally, a claim that the Respondent Association lobbied against a post-ratification Board proposal to increase the attendance officers salary is dismissed. The Director finds that the Association was not obligated to concede additional salary increases after the contract was fully negotiated.

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Appearances:

For the Respondent Board  
DeMaria, Ellis & Hunt, Esqs.  
(Brian N. Flynn, of counsel)

For the Respondent Association  
Feintuch & Porwich, Esq.  
(Allan Porwich, of counsel)

For Charging Parties  
Thomas DeLuca, Esq.

REFUSAL TO ISSUE COMPLAINT

On October 17, 1988, an unfair practice charge was filed by Walter McDermott, et. al. ("Charging Parties") alleging that the Jersey City Board of Education ("Board") and the Jersey City Education Association ("Association") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("the Act") by negotiating a collective agreement which discriminated

against the charging parties. On November 1, 1988, the charging parties filed an amendment alleging that the Board's conduct violated subsections 5.4(a)(1)(2)(3) and (7)<sup>1/</sup> and the Association's conduct violated subsections 5.4 (b)(1),(2),(3) and (5)<sup>2/</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 charged.<sup>3/</sup>

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- 1/ 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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; (7) Violating any of the rules and regulations established by the commission."
- 2/ These subsections prohibits employee organizations, their representatives or agents from: "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; (5) Violating any of the rules and regulations established by the commission."
- 3/ N.J.S.A. 34:13A-5.4 (c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from

The Commission has delegated its authority to issue complaints to me and established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the charging party's allegations, if true, may constitute unfair practices within the meaning of the Act.<sup>4/</sup> If this standard has not been met, I may decline to issue a complaint.<sup>5/</sup> For the reasons that follow, I decline to issue a complaint.

The Board and the Association negotiated an agreement covering certificated employees, attendance officers and support staff for the period September 1, 1988 through August 31, 1991. First, charging parties allege that the Association failed to solicit input from attendance officers before negotiations. Second, charging parties assert that, although the Board and the Association knew that attendance officers were required to have qualifications and experience equal to or greater than teachers, the negotiated agreement provided lower salaries in the salary guide for attendance

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3/ Footnote Continued From Previous Page

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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

4/ N.J.A.C. 19:14-2.1.

5/ N.J.A.C. 19:14-2.3.

officers than the salaries on the guide for teachers. Charging parties further assert that the Association unfairly conducted its contract ratification by failing to show the teachers' guide to the attendance officers or the attendance officers' guide to the teachers. They contend that both groups would have voted against the contract if they had known that the attendance officers' guide was lower.

Finally, charging parties contend that after the Board and the Association finalized the negotiated agreement, the Association coerced members of the Board and/or the district administration to oppose a proposed Board resolution to raise the attendance officers' guide.

The Association denies violating the Act. It argues that it posted a written solicitation of negotiations suggestions prior to commencement of negotiations. Although attendance officers did not come forward with suggestions, the Association was aware that attendance officer's wanted to be brought up to the teachers' guide. However, the Association was also aware that in other districts, teachers are paid significantly higher salaries than attendance officers. In negotiations, the Association's written proposal included raising the attendance officers' guide up to that of teachers. The Board negotiators would not agree because attendance officers are no longer required to hold teaching certifications. The parties eventually settled the contract, which included raises for all staff, including attendance officers, but

the Association was not successful in bringing attendance officers up to the teachers' guide.

The employee representative is permitted wide latitude in negotiating employees' terms and conditions of employment. Recently, in Camden Cty. Council No. 10, NJCSA, P.E.R.C. No. 89-54, 14 NJPER \_\_\_\_ (¶ \_\_\_\_ 1988), the Commission stated:

Unions have broad power to represent unit members and to negotiate their terms and conditions of employment. They must represent the interest of all such employees without discrimination. N.J.S.A. 34:13A-5.3. A breach of the duty of fair representation occurs only when a union's conduct toward a unit member is arbitrary, discriminatory, or in bad faith. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967). [Slip Op., p. 6].

In Belen, the court held that:

The mere fact that a negotiated agreement results in a detriment to one group of employees does not establish a breach of the duty by the union. Id. at 491. In Ford Motor Co. v. Huffman, 345 U.S. 330 (1953), the Court expressed the realities that underlie this rule of law:

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 servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. [Id. at 337-338]. [142 N.J. Super at 490-491].

It cannot be expected that the employee representative will completely satisfy every demand of its unit members, nor that all its demands will be met. The negotiations process involves give and take. The Association succeeded in securing increases for the attendance officers, although it did not achieve equality with the

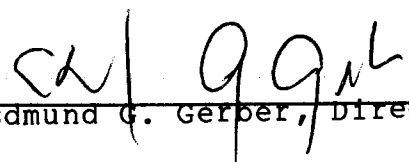
teachers' guide. Therefore, we are not inclined to find that the parties failed to negotiate in good faith.

The attendance officers (who are Association members) were not denied the right to vote on the contract, and in fact, they voted in favor of it. Although charging parties claim that they did not see guides other than their own, there is no suggestion that they were denied access to other guides. There is nothing in the charge which suggests that the Association acted arbitrarily and in bad faith in conducting the ratification vote. The organization's internal ratification procedures are not, normally, within the scope of this Commission's jurisdiction. State Troopers NCO Association, D.U.P. 88-7, 14 NJPER 15 (¶19004 1988). But See West New York, P.E.R.C. No. 89-60 15 NJPER 21 (¶20007 1988).

After the contract was ratified, a Board member who was not part of the Board's negotiations team proposed a Board resolution to increase the attendance officers' salary guide to that of teachers. Even if the allegations that the Association lobbied against this proposal were true, the Association was not under any obligation to concede additional salary increases for attendance officers after the contract was fully negotiated.

For the foregoing reasons, we decline to issue a complaint in this matter. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: February 24, 1989  
Trenton, New Jersey