D.U.P. NO. 94-5

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

In the Matter of

NEW PROVIDENCE BOARD OF EDUCATION and
NEW PROVIDENCE EDUCATION ASSOCIATION,

Respondents,

-and- Docket No. CI-93-95

JOSEPHINE G. DEININGER,

Charging Party.


SYNOPSIS

The Director dismisses an unfair practice charge filed against a majority representative and public employer. The Director determined that a disparity in negotiated wage increases among unit titles is not an unfair practice which violates 5.4(b)(1) and (5) of the Act. He also determined that no facts demonstrate that the employer's ratification of a negotiated agreement was in retaliation for the charging party's protected activity.

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Appearances:

For the Respondent Board of Education,
Martin R. Pachman, attorney

For the Respondent Education Association,
Marianne Galluccio, President

For the Charging Party,
Josephine G. Deininger, pro se

REFUSAL TO ISSUE COMPLAINT

On June 28, 1993, Josephine Deininger filed an unfair practice charge against New Providence Board of Education and New Providence Education Association, NJEA. The charge alleges that on February 11, 1993, the Board approved and ratified a three-year contract with the Association, allegedly violating subsection 5.4(a)(3) of the Act.[1/] It also alleges that the negotiated

1/ This subsection prohibits public employers, their representatives or agents from: "(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."

salary guide provides her job classification a 4.5% wage increase and other classficiations received 8% wage increases. These acts allegedly violate 5.4(b)(1) and (5) of the Act.

A majority representative's duty of fair representation during negotiations was first discussed by the U.S. Supreme Court in Ford Motor Co. v. Huffman, 345 U.S. 330, 31 LRRM 2548 (1953). The Court recognized the need to allow a bargaining representative a "...wide range of reasonableness..." in negotiating provisions of an agreement. The Court wrote:

> ...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 to a statutory bargaining representative in serving a unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.
>
> (345 U.S. at 338, 31 LRRM at 2551).

The Appellate Division adopted the Ford Motor Co. standard for evaluating the conduct of a majority representative in negotiating agreements in Belen v. Woodbridge Tp. Bd. of Ed., et al., 142 N.J. Super. 486 (App. Div. 1976), certif. den. 72 N.J. 458 (1976).

The charging party's chief allegation is that the negotiated wage increase affecting her title was not commensurate with those of other unit titles. In AFT Local 481 (Jackson), P.E.R.C. No. 87-16, 12 NJPER 734 (¶17274 1986), the Commission found

that a disparity in negotiated wage increases was not an unfair practice. It relied in part on its previous decision in City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). There, the Commission wrote:

> ...While a breach of the duty does not arise from mere disparities in wage increases or decreases, [citation omitted], a breach does exist when, as here, the exclusive representative makes a deliberate decision in bad faith to cause a unit member economic harm.
>
> Union City, at 8 NJPER 100.

The charging party concedes that it received at least a 4.5% increase in the successor agreement. No facts have been alleged which suggest that the Association made a "deliberate decision" causing the charging party any "economic harm." Int'l Brotherhood of Electrical Workers (DeSanti), D.U.P. No. 83-11, 9 NJPER 300 (¶14139 1983). Because some unit members did not receive the same percentage increases as other unit employees generally is not a basis upon which a complaint may issue.

I also dismiss the charge filed against the Board. The facts alleged in the charge do not suggest that the employment action was taken in rataliation for Deininger's exercise of protected activity. Tp. of Bridgewater and Bridgewater Public Works Assn., 95 N.J. 235 (1984).

Based upon the foregoing, the allegations of the charge do not meet the Commission's complaint issuance standard. Accordingly,

I decline to issue a complaint on the unfair practice charge and dismiss the charge in its entirety. N.J.A.C. 19:14-2 and 2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: July 22, 1993
Trenton, New Jersey