D.U.P. NO. 2002-8

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

In the Matter of

UNION COUNTY VOCATIONAL &
TECHNICAL BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2001-231

UNION COUNTY VOCATIONAL &
TECHNICAL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Union County Vocational & Technical Education Association. Specifically, the Director finds that allegations contained in the charge based upon the termination of two employees and the elimination of their campus police positions which occurred on June 30, 2000 are untimely under N.J.S.A. 34:13A-5.4(c). The Director also finds that the Association waived its right to pursue its claims of retaliation against the two employees and threatening to subcontract police services because of their activities in seeking contractual health benefits by entering into a settlement agreement resolving these issues. In addition, the Director finds that even if the Association had preserved its right to file a claim relating to the September 2000 subcontracting of police services, the employer need not negotiate over a decision to subcontract. Since there is no viable retaliation claim or allegation of bad faith, there is no 5.4a(1) or(3) violation of the Act. In any event, the Director finds that in September 2000, the Board had no police positions left to fill or subcontract since the elimination of police jobs occurred in June 2000. Finally, the charge provides no factual support for the alleged 5.4a(5) violation.

D.U.P. NO. 2002-8

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

In the Matter of

UNION COUNTY VOCATIONAL &
TECHNICAL BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2001-231

UNION COUNTY VOCATIONAL &
TECHNICAL EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Edward J. Kologi, attorney

For the Charging Party,
Oxfeld Cohen, attorneys
(Gail Oxfeld Kanef, of counsel)

REFUSAL TO ISSUE COMPLAINT

On February 28, 2001, the Union County Vocational and Technical Education Association (Association) filed an unfair practice charge against the Union County Vocational and Technical Board of Education (Board). The Association alleges that the Board violated 5.4a(1), (3) and (5)[1/] of the New Jersey

---

1/ These provisions 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

Footnote Continued on Next Page

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by terminating two employees serving in the title campus police officer because they sought contractual health insurance coverage, and by subcontracting police services to the Scotch Plains-Fanwood police department.

The Board denies that it committed an unfair practice. It asserts that the Association is attempting to reopen a claim which was previously settled and for which releases were signed.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated November 16, 2001, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

1/ Footnote Continued From Previous Page

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."

The Association is the majority representative of Board employees including the campus police officers.2/

In May 1998, the Association filed an unfair practice charge (docket no. CO-98-423) alleging that the Board unilaterally reduced the workweek of Police Officers Ralph Cafone and Neal Coleman to 19 1/2 hours to circumvent paying them health benefits pursuant to the Association's collective agreement with the Board. The Association also alleged that the Board threatened to terminate the officers and subcontract their services. In April 2000, the Association amended its charge to further allege that the Board notified Cafone and Coleman that their employment would be terminated effective June 30, 2000. As of that date, the Board apparently did terminate the officers and their positions were eliminated.

In July 2000, the parties attended a settlement conference concerning the Association's charge. The Board allegedly told the Association that it was eliminating the police program and would seek to have a traffic light installed at the intersection where Cafone and Coleman had been assigned. The parties then negotiated a settlement agreement to resolve the issues raised in the charge. The settlement apparently included the Association's agreement to withdraw its demand for reinstatement of the employees and to withdraw the charge in exchange for the Board's agreement to pay the officers retroactively to their termination.

2/ We make no determination regarding whether these employees are police officers within the meaning of the Act.

On or about September 6, 2000, the Board contracted with the Scotch Plains-Fanwood police department to provide police services to the district. Subsequently, on October 18, 2000, Cafone and Coleman signed releases settling all claims arising out of the unfair practice charge CO-98-423. In exchange for the releases, the Board paid them $13,043.69 and $10,813.94 respectively. Specifically, the releases contained the following language:

> 1. **Release.** I release and give up any and all claims and rights which I may have against you through August 31, 2000. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to August 31, 2000. I specifically release the following claims:
>
> > Any and all claims for damages of any nature whatsoever, whether economic or non-economic, arising out of my employment at the Union County Vocational & Technical School, including, but not limited to, claims that were the subject of a charge filed with the Public Employment Relations Commission entitled Union County Vocational and Technical Education Association v. Board of Education of the Vocational Schools in the County of Union, Case Numbers CO-98-423 & CO-98-415.[3/]

On December 1, 2000, the Commission's Hearing Examiner deemed the charge under CO-98-423 withdrawn based on the implementation of the settlement terms.

3/ The charge under CO-98-415 was filed contemporaneously with CO-98-423 and involved identical issues as to aides and teacher's aides.

ANALYSIS

The Association contends that Cafone and Coleman were terminated and the Board subcontracted for police services because of Cafone and Coleman's activities in seeking contractual health coverage.

The Board responds that the Association is seeking to get a second "bite of the apple" by reopening claims which were previously settled and released, namely the termination of Cafone and Coleman and subcontracting of police services in retaliation for their seeking health insurance coverage. The Board asserts that the releases' clear and unambiguous language binds the parties and precludes further litigation. Indeed, it contends that to issue a complaint would contravene strong policy considerations in favor of the finality of a release.

The Association counters that the releases only release claims up through August 31, 2000. Therefore, the Association and the two officers preserved their rights to pursue an action against the Board when on September 6 it employed police officers in the same capacity in which Cafone and Coleman had worked.

First, some of the allegations in the charge are untimely. N.J.S.A. 34:13A-5.4(c) establishes a six-month statute of limitations period for the filing of unfair practice charges. The statute provides in pertinent part:

> ...that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from

> filing such a charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

Here, the operative events of the allegations regarding Cafone and Coleman's termination as well as the elimination of their positions occurred on June 30, 2000. Both of these events occurred more than six months prior to the filing of the charge. Because the charge was not filed within six months of these alleged unfair practices, and there is no evidence or allegation that the Association was prevented from filing the charge in a timely manner; therefore, these allegations are untimely.

Next, the Association waived its right to pursue these claims by entering into a settlement agreement resolving these issues. The Commission is charged with the responsibility for "the prevention or prompt settlement of labor disputes...." N.J.S.A. 34:13A-2. Consistent with this responsibility, the Commission strongly advocates the voluntary resolution of labor disputes. This policy presumes finality in the process. When the parties reach a settlement and withdraw an unfair practice charge based upon such settlement, the Commission will only reopen such a matter in the most compelling circumstances, such as where the agreement is fraudulent or otherwise conflicts with State law or regulations. North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 82-107, 8 NJPER 314, 315 (¶13141 1982); Bor. of East Rutherford, P.E.R.C. No. 82-51, 7 NJPER 680 (¶12307 1981).

Here, the parties voluntarily entered into a settlement agreement to resolve a charge alleging retaliation against the two employees and threatening to subcontract police services. There are no allegations that the settlement of that charge was fraudulent or otherwise conflicts with State law or regulations. Cafone and Coleman were already compensated for the claims that they were terminated and/or their jobs were eliminated because of their protected activity and they signed releases resolving those claims. Similarly, the Association settled its claims relating to the alleged retaliatory elimination of those jobs. These claims cannot be reopened. Therefore, I find that the Association's charges concerning Cafone's and Coleman's termination and the elimination of their positions do not meet the Commission's complaint issuance standard and are dismissed.

Additionally, the Association alleges that the Board violated the Act when in September 2000, it subcontracted police services with the Scotch Plains-Fanwood police department. The Association asserts that it preserved its right to file a claim in the event that the Board contracted out police services after August 31, 2000. The Board argues that there exists no preservation of rights on this issue.

Assuming arguendo that the Association did preserve a right to file a claim relating to the September 2000 subcontracting of police jobs, I decline to issue a Complaint on this allegation. Under the Supreme Court's holding in Local 195, IFPTE v. State, 88 N.J. 393 (1982), a public employer need not negotiate over a decision to subcontract governmental services. Without a viable

retaliation claim or allegation of bad faith, subcontracting police services does not trigger a violation of the Act.

The elimination of the police jobs occurred in June 2000. The Association and the two officers settled any claims related to the elimination of their jobs and the Board's threat to subcontract. By September 2000, the Board had no police positions left to fill. Whether in September 2000 the Board chose to install a traffic light or deliver police service by arrangement with the Scotch Plains-Fanwood police department, there is no 5.4a(3) or derivative a(1) retaliation claim that the Board replaced unit positions with subcontracted positions because those positions no longer existed after June 30, 2000. Thereafter, there were no unit positions left to refill. No new facts are alleged in this charge to support complaint issuance on the 5.4a(1) and (3).

Finally, I do not find any factual support for the alleged violation of 5.4a(5).

Based on all the foregoing, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.[4/]

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Susan Wood Osborn

Susan Wood Osborn, Acting Director

DATED: December 12, 2001
Trenton, New Jersey

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