

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

In the Matter of

ESSEX COUNTY EDUCATIONAL SERVICES
COMMISSION,

Respondent,

-and-

DOCKET NO. CO-81-69

EDUCATIONAL SERVICES TEACHERS
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by an employee representative alleging that the public employer violated the Employer-Employee Relations Act by: (1) subcontracting its instructional services to a private concern without prior negotiation; (2) failing to rehire unit members for the next school year; and (3) terminating further negotiations with the Charging Party. The Director, noting that the issue of subcontracting is not negotiable, also notes that there are contemporaneous proceedings before the Chancery Division of the Superior Court and before the Commissioner of Education which pursue the relief sought in the first two aspects of the charge. The third allegation, relating to a termination of negotiations, is incorporated and subsumed within a second Unfair Practice Charge, which has been made the subject of a complaint.

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Appearances:

For the Respondent
Petit-Clair & Graves, attorneys
(Edward F. Petit-Clair, of counsel)

For the Charging Party
Greenberg, Kelley & Prior, attorneys
(James F. Schwerin, of counsel)

REFUSAL TO ISSUE COMPLAINT

Two unfair practice charges have been filed with the Public Employment Relations Commission by the Educational Services Teachers Association ("ESTA") against the Essex County Educational Services Commission ("ECESC") arising out of ECESC's decision to subcontract certain teaching services. The first charge (Docket No. CO-81-69), filed on September 18, 1980, alleges that ECESC acted in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (the "Act"), specifically N.J.S.A.

34:13-5.4(a)(1), (2), and (5). ^{1/} The second charge, Docket No. CO-82-190, filed February 1, 1982, contains allegations under N.J.S.A. 34:13A-5.4(a)(1) and (5).

N.J.S.A. 34:13A-5.4(c) provides that "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 ..." 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 to the Director of Unfair Practices, that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues ..." (emphasis added) ^{2/} The Commission rules provide that the undersigned may decline to issue a complaint. ^{3/}

The initial charge, CO-81-69, is the subject of the within determination wherein the undersigned declines to issue a complaint.

^{1/} These subsections prohibit 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. (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."

^{2/} N.J.A.C. 19:14-2.1

^{3/} N.J.A.C. 19:14-2.3

However, since they interrelate, both charges will be discussed. A complaint shall be issued as to the second charge.

In the first charge, ESTA alleges that during winter and spring 1979, it was engaged in collective negotiations with ECESC towards a contract to cover the coming school year. During the period of negotiations, however, ECESC determined to subcontract its instructional services to a private corporation. ESTA claims that ECESC ceased negotiations, terminated all its teachers from employment, and did not negotiate with respect to its decision to subcontract. ESTA alleges:

The refusal of the commission to negotiate a collective negotiation agreement for the 1980-81 school year was a refusal to negotiate in good faith, violative of N.J.S.A. 34:13A-5.4(a)(5). The Commission's refusal to rehire any of the teachers and the contracting out of its obligation to provide instructional services, and the refusal to rehire the teachers notwithstanding the notices to rehire given to them constituted acts of the Commission interfering with employees and dominating or interfering with an employee organization contrary to N.J.S.A. 34:13A-5.4(a)(1) and (2).

In addition to the filing of the unfair practice charge with the Commission, ESTA and its NJEA parent commenced proceedings in the Superior Court and with the Commissioner of Education. Eventually, the Superior Court, Appellate Division held that ECESC did not have the legal authority to subcontract its educational services. New Jersey Education Assn. et al. v. Essex County Education Services Commission, App. Div. Docket No. A-3986-80T2 (October 15, 1981), pet. for certif. dismissed, Sup. Ct. Docket No. DO-14 (January 8, 1982).

Further proceedings have been remanded to the Chancery Division, where ESTA has moved for an order restoring the employment of all 1979-1980 teachers and compensation for all benefits that the teachers would have received had they not been terminated.

In the second charge, Docket No. CO-82-190, ESTA alleges that shortly after the Appellate Division decision it sent a telegram to ECESC's attorney demanding that ECESC "continue bargaining negotiations unlawfully terminated by your client when it acted ultra vires in contracting with [the subcontractor]." ESTA alleges that ECESC has refused to resume negotiations.

Having considered all the above, the undersigned is satisfied that litigation of the first charge is not warranted and duplicative of other proceedings. ECESC's decision to subcontract was non-negotiable, and any responsibility it might have had to discuss its decision with ESTA, under the facts alleged, is questionable. See Local 195, IFPTE, AFL-CIO v. State of New Jersey, 88 N.J. 393 (1982). A full panoply of remedies is available to ESTA, if appropriate, before the court and the Commissioner of Education relating to the reinstatement rights of teachers and their compensation for any rights violated by ECESC.

Further, the allegations of the initial charge relating to ECESC's termination of negotiations are incorporated and subsumed within the second charge. Litigation of CO-82-190 will provide a forum to air all of ESTA's factual claims, and adequate remedies, if

appropriate, may be obtained through the litigation of this charge.

Accordingly, the undersigned declines to issue a complaint with respect to Docket No. CO-81-69. A complaint as to CO-82-190 shall issue under separate cover.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: June 3, 1982
Trenton, New Jersey