

D.U.P. NO. 89-9

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

In the Matter of

WASHINGTON TP. EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-89-34

ROSEMARY BORKOWSKI, BARBARA RUTH BOYLE,  
MARYANN KWIETKOWSKI & REBECCA MANGANELLO,

Charging Parties.

SYNOPSIS

The Director refuses to issue a complaint on a charge alleging that the Association violated its duty to fairly represent the Charging Parties by agreeing with the Board to delay the payment of 1988-89 salary increments until October 1, 1988. The agreement to delay increment payments was part of a successor collective negotiations agreement ratified by the parties in June 1988. There were no allegations that this agreement was negotiated in bad faith or that by agreeing to the delayed increment payments, the Association treated the Charging Parties arbitrarily or discriminatorily.

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Appearances:

For the Respondent  
New Jersey Education Association  
(Eugene Sharp, Field Rep.)

For the Charging Parties  
Dwyer & Canellis, Esqs.  
(Paul J. Burns, of counsel)

REFUSAL TO ISSUE COMPLAINT

On October 18, 1988, Rosemary Borkowski, Barbara Ruth Boyle, Maryann Kwietkowski and Rebecca Manganello filed an unfair practice charge alleging that the Washington Township Education Association, N.J.E.A. ("Association") violated subsections 5.4(b)(1), (3) and (5)<sup>1/</sup> of the New Jersey Employer-Employee

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<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

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by agreeing with the Washington Township Board of Education ("Board") to delay the payment of 1988-89 teacher salary increments by one month under the terms of a recently ratified 1988-1991 agreement.

The following facts are undisputed. The charging parties are public employees under the Act and are represented in collective negotiations by the Association. On June 20, 1988, the Association ratified a collective negotiations agreement to succeed its 1985-88 agreement with the Board. By its terms, the new agreement runs from July 1, 1988 through June 30, 1991. It provides that the Board would begin paying 1988-89 salary increments on October 1, 1988.

The charging parties allege that the Association violated its duty to fairly represent them by agreeing to an increment schedule which does not coincide with the beginning of the school year in September. Rather, the payment of increments commences on October 1. The Association denies that it violated the Act by this agreement with the Board.

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

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1/ Footnote Continued From Previous Page

rights guaranteed to them by this act. (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."

complaint stating the unfair practice charged.<sup>2/</sup> The Commission has delegated its authority to issue complaints to me and has 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 allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.<sup>3/</sup> The Commission's rules provide that I may decline to issue a complaint.<sup>4/</sup>

N.J.S.A. 34:13A-5.3 provides in part:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the Supreme Court articulated the standard for determining whether a labor organization violated its duty of fair representation. The Court stated:

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

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

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

...a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith. [Id. at 190, 64 LRRM 2376]

New Jersey has adopted the Vaca standard in deciding fair representation cases. See Saginario v. Attorney General, 87 N.J. 480 (1981).

Relying on this standard, we advised the parties on January 20, 1989, that we were inclined to refuse to issue a complaint. The parties were invited to file additional position statements and to bring to our attention any additional relevant facts by January 31, 1989.

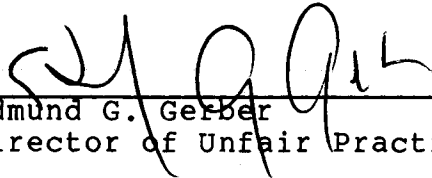
On January 31, 1989, the Charging Parties filed a letter asserting that N.J.S.A. 18A:29-4.1 required the Board to make increment payments effective September 1, 1988. They also cited Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978), for the proposition that, upon expiration of a collective agreement, the status quo, (i.e., the payment of automatic increments) must be maintained. Relying on N.J.S.A. 18A:29-4.1 and Galloway, the Charging Parties argue that the Association's agreement to delay increment payments by one month was arbitrary.

We disagree. Interpreting N.J.S.A. 18A:29-4.1, the Supreme Court in Galloway held that automatic salary increments provided in an expired collective agreement are binding in the next school year "or until the schedule [is] modified...." 78 N.J. at 51. Here, the Association and Board negotiated a new salary guide before the start

of the 1988-89 school year. As we stated in our January 20 letter to the parties, there are no allegations of bad faith or that the agreement to delay the payment of increments discriminated against the Charging Parties or treated them arbitrarily.

Accordingly, we refuse to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



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Edmund G. Gerber  
Director of Unfair Practices

DATED: February 16, 1989  
Trenton, New Jersey