P.E.R.C. NO. 79-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SHREWSBURY,

Respondent,

-and-

Docket No. CI-79-12

RAYMOND MASS, CHIEF OF POLICE,

Charging Party.

SYNOPSIS

The Charging Party had appealed from the Director's refusal to issue a complaint with respect to certain allegations against the Borough of Shrewsbury. Specifically, the Charging Party, an individual Chief of Police, alleged that the Borough had violated the Act by refusing to negotiate with him, by refusing to sign an agreement with him, and by dominating or interfering with the formation, existence or administration of an employee organization. The Director had held that an individual could not constitute an "employee organization" or an "appropriate unit" for collective negotiations and, therefore, that an individual could not bring such a charge. The Commission affirmed the Director's ruling that a complaint cannot issue with respect to these allegations because an individual cannot constitute an "employee organization" nor, an "appropriate unit".

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Appearances:

For the Respondent, Reussile, Cornwell, Mausner & Carotenuto, Esqs.
(Martin M. Barger, of Counsel)

For the Charging Party, Douglas J. Widman, Esq.

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on August 28, 1978 by Police Chief Raymond Mass against the Borough of Shrewsbury (the "Borough") alleging the Borough had committed unfair practices in violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (6).

After the Charge was processed pursuant to the Commission's Rules, the Director of Unfair Practices, in a written decision (D.U.P. No. 79-12, 4 NJPER ___ (¶ 1978)) refused to issue a complaint with respect to Chief Mass' charge that the Borough had violated N.J.S.A. 34:13A-5.4(a)(2), (5) and (6). A Complaint and Notice of Hearing was simultaneously

issued with respect to the alleged violations of N.J.S.A. 34:13A-5.4(a)(1), (3) and (4).

Charging Party appeals from the Director's refusal to issue a complaint with respect to the above-noted subsections of the Act.[1/] We have reviewed the Director's written determination and affirm his ruling essentially for the reasons stated therein.

The Director's refusal to issue a complaint with respect to the alleged violations of N.J.S.A. 34:13A-5.4(a)(2), (5) and (6) stems from the language of these subsections which proscribes certain public employer conduct only with respect to an "employee organization" ((a)(2)), and the "majority representative of employees in an appropriate unit." ((a)(5) and, by implication, (a)(6)). The Director held the Act did not envision that a single individual could constitute an employee organization or an appropriate unit for collective negotiations.

As stated by the Director in his prior ruling in In re Borough of Jamesburg, D.U.P. No. 79-5, 4 NJPER 398 (¶4180 1978), the principle of collectivity underlies the entire Act. In Jamesburg, supra, and in the instant case, the Chiefs of

1/ Charging Party's submission to the Commission is labeled a Request for Review. Such applications are properly made when review is sought of a Representation decision of the Director. Review of the Director's refusal to issue an unfair practice complaint may be had as of right, pursuant to N.J.A.C. 19:14-2.3. We have treated Charging Party's submission as having been made pursuant to this section since the required submissions for a request for review (N.J.A.C. 19:11-8.3) and an appeal from a refusal to issue (N.J.A.C. 19:14-2.3) are nearly identical, even though review under the former rule is discretionary. A Statement in Opposition to Charging Party's appeal was filed by the Borough of Shrewsbury. Thereafter, the Charging Party filed a letter memorandum although our Rules do not contemplate such a filing. We have considered all arguments raised.

Police of the respective communities filed unfair practice charges which alleged, inter alia, that the public employers had refused to negotiate, in violation of N.J.S.A. 34:13A-5.4(a)(5), with purported negotiations units consisting solely of the Chief of Police in each case. The language of section (a)(5) makes it an unfair practice if the employer refuses to negotiate with or process grievances presented by the majority representative of employees in an appropriate unit. Unless a unit of one can be deemed appropriate under the Act, no violation of N.J.S.A. 34:13A-5.4(a)(5) could be found, and thus a complaint should not issue. As discussed by the Director, the same principle applies to alleged violations of N.J.S.A. 34:13A-5.4(a)(6), since the requirement that the end product of negotiations be memoralized in a signed writing presupposes that there existed a statutory obligation to negotiate in the first instance.

It is of no moment that Chief Mass and the Borough of Shrewsbury have in the past negotiated concerning the Chief's terms and conditions of employment and have embodied such agreements in writing. N.J.S.A. 34:13A-5.3 provides that the Commission will not intervene in matters of unit definition and recognition unless a dispute arises. Thus, it is apparent that negotiating relationships can (and do) exist between public employers and their employees who may be grouped in inappropriate units simply because neither party has questioned the composition

of the unit, and the parties have nonetheless enjoyed a workable employer-employee relationship. The fact remains that the Borough was not under a legal obligation to negotiate with the Chief.

Moreover we believe that the result reached by the Director comports with relevant decisions of our Supreme Court. In Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409 (1970), it was recognized that the goal of Article I, ¶19 of the New Jersey Constitution (1947) was collectivity. While the Court was not addressing the same issue as is present herein, the question faced in Lullo, i.e. the validity of the principle of exclusive representation, nonetheless involved an analysis of the rights of individual public employees regarding the presentation of negotiations proposals to their employers. Responding to a contention that the Legislature could not validly force individual employees to deal with the employer through a single majority representative, the Court declared:

> Acceptance of that construction would not only fly in the fact of the beneficial and practical evolution of employer-employee relations, but would as hereinafter shown, bring about a prejudicial dilution of the basic right to organize as secured by the very general language of Paragraph 19.

> The labor union movement was born of the realization that a single employee had no substantial economic strength. He had little leverage beyond the sale of his own efforts to aid him in obtaining fair wages, hours of work and working conditions.
> 55 N.J. at 425 (emphasis added)

The Court went on to note that a major purpose of the National Labor Relations Act was to equalize the strength of private sector employees and their employers through organization and observed that such an aim "could not be accomplished if numerous individual employees wished to represent themselves..." 55 N.J. at 426.[2/] Additionally the Supreme Court, in reviewing its holding in Lullo in a recent decision noted, "We found that the Constitution did not contemplate that each employee had a right to negotiate his own terms and conditions of employment." Red Bank Reg. Ed. Assn v. Red Bank Reg. Bd. of Ed., 78 N.J. 122, 134 (1978).

In another decision of the Supreme Court, which was involved with appropriate unit determinations under the Act, State v. Prof. Assn of N.J. Dept. of Ed., 64 N.J. 231 (1974), the Commission was advised to be mindful of the public interest and to avoid undue fragmentation of negotiating units. 64 N.J. at 250. The Court rejected a contention that a unit should be deemed as appropriate under the Act solely upon the showing that a community of interest existed among the employees seeking

2/ The Court in Lullo, sanctioned the use of precedent arising under the NLRA to aid in the construction of our Act. Thus, it was appropriate for the Director to examine private sector decisions regarding one person units in his decision in Jamesburg, supra, which formed the basis for his decision in the instant case.

representation. It declared, "What is called for on the part of the Commission is 'due regard for', not exclusive reliance upon such community of interest." 64 N.J. at 257.

Despite the fact there will certainly be no internal strife in a one-person unit, it would not be in the public interest to sanction the fragmentation that could result if we were to find one-person units appropriate under the Act. 3/ It is almost a truism to hold that a "community of interest' cannot exist in a unit made up of one individual; the term "community" does not really lend itself to such an application.

We also affirm the Director's ruling that a complaint cannot issue with respect to an alleged violation of N.J.S.A. 34:13A-5.4(a)(2) since an individual cannot constitute an "employee organization" within the meaning of that section. This does not imply that an individual employee may not file a charge under subsection (a)(2) when the individual is acting as a representative of a group of employees constituting an employee organization. That issue was not before the Director and is not

3/ Our affirmance of the Director's decision that Chief Mass may not comprise a one-person unit for collective negotiations does not necessarily mean he is without rights under the Act or that there is no "appropriate" unit of which he may be a member. A complaint has issued with respect to the Borough's alleged violations of N.J.S.A. 34:13A-5.4(a)(1), (3) and (4), and there is also pending a petition for clarification of unit with respect to Chief Mass (CU-79-2). These issues might be reached in further proceedings befor the agency and are not ripe for determination at this time. The instant decision is concerned with whether Chief Mass could constitute an "appropriate unit" for collective negotiations and an "employee organization".

before us at this time. A public employee purportedly constituting a unit of one is not an employee organization.

ORDER

The decision of the Director of Unfair Practices is affirmed in all respects.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Hipp and Parcells voted for this decision. Commissioner Schwartz concurs with the finding of a dismissal of an N.J.S.A. 34:13A-5.4(a)(2) and (a)(5) violation, but dissents from the dismissal of an N.J.S.A. 34:13A-5.4(a)(6) violation. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
January 16, 1979
ISSUED: January 17, 1979