

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF
THE CITY OF ENGLEWOOD,

Respondent,

-and-

LOCAL 29, RWDSU, AFL-CIO,

Docket No. CO-81-388-43

Charging Party,

-and-

ENGLEWOOD TEACHERS ASSOCIATION,
NJEA,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies a Motion for Reconsideration filed by Local 29, RWDSU, AFL-CIO, and declines to stay a scheduled representation election. The Commission sees no reason to reconsider its earlier decision in this case. P.E.R.C. No. 82-69, 8 NJPER ____ (¶ ____ 1982.)

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF
THE CITY OF ENGLEWOOD,

Respondent,

-and-

LOCAL 29, RWDSU, AFL-CIO,

Docket No. CO-81-388-43

Charging Party,

-and-

ENGLEWOOD TEACHERS ASSOCIATION,
NJEA,

Intervenor.

Appearances:

For the Respondent, John Miraglia, Labor Consultant

For the Charging Party, Osterweil, Wind & Loccke, Esqs.
(Manuel A. Correia, of Counsel)

For the Intervenor, Schneider, Cohen, Solomon &
DiMarzio, Esqs.
(Bruce D. Leder, of Counsel)

DECISION ON MOTION FOR RECONSIDERATION

On June 29 and August 10, 1981, Local 29, RWDSU, AFL-CIO ("Local 29") filed an unfair practice charge with the Public Employment Relations Commission. The charge alleged that the Board of Education of the City of Englewood (the "Board") had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections N.J.S.A. 34:13A-5.4 (a) (1), (2) and (7),^{1/} when it allowed custodial staff members

1/ These subsections 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; and (7) Violating any of the rules and regulations established by the commission."

to attend meetings of the Englewood Teachers Association (the "Association") during working hours without allowing Local 29 a similar privilege and when it stopped deducting dues from the paychecks of members of Local 29 without proper deauthorizations.

On October 21, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On November 18, 1981, Commissioner Hearing Examiner Joan Kane Josephson granted the Association's motion for leave to intervene.

On November 30, 1981, the Hearing Examiner conducted a hearing. After Local 29 had presented its case and rested, the Board and the Association made Motions to Dismiss the Complaint. The Hearing Examiner granted these motions on the record.

On December 9, 1981, Local 29, pursuant to N.J.A.C. 19:14-4.7, filed a Request for Review of the Hearing Examiner's decision granting the Motions to Dismiss.^{2/} Local 29 contended that the Hearing Examiner erred when she refused to grant Local 29's request that the Hearing Examiner conduct her own inquiry by subpoenaing the Board's dues checkoff records, or permit Local 29 to reopen its case to call two additional witnesses.

On January 12, 1982, the Commission denied Local 29's Request for Review. We emphasized that Local 29 was given full opportunity to present its case, but failed to prove the allegations of the Complaint by a preponderance of the evidence. As

^{2/} Counsel for Local 29 for the purposes of the appeal and this motion was not the counsel for Local 29 during the hearing.

stated in the decision, Local 29 did not even have a good faith basis for believing that the two additional witnesses or the dues records could support any of the allegations in its charge. Rather, the Charging Party was without knowledge as to the facts and was hopeful that these additional witnesses and/or records might reveal something helpful to its position.

On February 3, 1982, Local 29 filed the instant Motion for Reconsideration.^{3/} Accompanying the Motion for Reconsideration are documents styled Complaint and Order to Show Cause; the gist of these documents is a request to stay a representation election scheduled for February 19, 1982 in which the Board's custodial staff would vote for Local 29, the Association, or neither.^{4/} Local 29 hopes to secure the reinstatement of the Complaint and then use the pendency of the Complaint to block the election.

In its Motion for Reconsideration, Local 29 does not dispute our finding that it rested its case despite having failed to meet its burden of proof and that it did not seek to call additional witnesses or produce documents until after its adversaries made Motions to Dismiss. Indeed, Local 29 concedes

^{3/} Pursuant to N.J.A.C. 19:14-8.4, the motion for reconsideration must be filed within 15 days after the service of the Commission's decision. Local 29's attorney asserts he received the decision January 18, 1982. However, the certified return receipt in the Commission's possession indicates that the post office returned the receipt on January 16, 1982. The space entitled date of delivery is vacant. If Local 29 received the decision on or before January 16, 1982, the instant motion is untimely.

^{4/} On August 19, 1981, the Commission directed the holding of a representation election and remanded to the Director for further processing. See, In re Englewood Board of Education, P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981). The election was blocked during the pendency of the unfair practice charge litigation.

in its motion, "the Commission adhered strictly to the letter of the law," but argues that the "spirit" of the law required allowing it an additional day of hearing so that it would have had the opportunity to introduce the Board's dues records.^{5/} Local 29, however, always had this opportunity. It could have subpoenaed these documents before the hearing. Perhaps during the hearing and before it rested it could have requested an adjournment so that it could obtain the documents. What it could not do was present its case, rest, listen to Motions to Dismiss, and then seek an additional opportunity to secure these records.

Having carefully considered the Motion for Reconsideration and accompanying documents, we perceive no basis to disturb our original decision. Thus, we hereby deny the Motion and decline to stay the scheduled election.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch and Suskin voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed. Commissioners Graves and Hartnett were not present.

DATED: February 9, 1982
Trenton, New Jersey
ISSUED: February 10, 1982

^{5/} Local 29 makes no attempt in its brief to suggest the good faith basis for believing that these witnesses or documents would present evidence supporting its charges.