P.E.R.C. NO. 2017-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1031,

Respondent,

-and-

Docket No. CE-2015-007

RUTGERS UNIVERSITY,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Director of Unfair Practices refusing to issue a complaint based on an unfair practice charge filed by Rutgers against the CWA. The charge alleges that the CWA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by requesting that Rutgers engage in coalition bargaining with the CWA and three other units in order to negotiate on big issues and threatening a negotiations logjam if Rutgers refused. The Commission finds that Rutgers failed to allege a coercive pattern of conduct or adverse impact on or impediment to negotiations warranting issuance of a complaint and agrees with the Director that the charge is moot considering that the parties continued negotiations without delay or detriment, successfully completed contract negotiations, and understand their future negotiations obligations.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Weissman & Mintz, LLC, attorneys (Steven P. Weissman, of counsel and on the brief)

For the Charging Party, McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys (John J. Peirano, of counsel and on the brief; David Alberts, on the brief)

DECISION

On October 29, 2014 and February 19, 2015, Rutgers, The State University (Rutgers) filed an unfair practice charge and amended charge, respectively, alleging that the Communications Workers of America, Local 1031 (CWA) violated sections 5.4(b)(2) and (3)[1/] of the New Jersey Employer-Employee Relations Act,

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1/ These provisions prohibit employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit
(continued...)

N.J.S.A. 34:13A-1, et seq. (Act) on September 24 and 29, 2014 by, among other things, requesting that Rutgers agree to engage in coalition bargaining with the CWA and three other units, threatening that if Rutgers refused "the ensuing deadlock would cause a 'logjam' in negotiations," and stating that the four collective negotiations units would not negotiate or reach agreements separately on "big issues." In its amended charge, Rutgers noted that negotiations sessions occurred after September 29, 2014 on December 3, January 20, 2015, February 2 and 17.

On April 16, 2016, the Director of Unfair Practices advised the parties that she was inclined to dismiss the unfair practice charge and amended charge. However, she provided Rutgers until April 22 to file an amended charge with additional facts or a letter brief with legal argument.[2/] On May 6, Rutgers filed a letter brief requesting that the Director reconsider her decision not to issue a complaint based upon erroneous findings of fact and conclusions of law. There were no further submissions.

On May 13, 2016, the Director issued a decision in which she refused to issue a complaint. D.U.P. No. 2016-5, 43 NJPER 15 (¶5 2016). She determined that even if the CWA made the statements

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1/ (...continued)
concerning terms and conditions of employment of employees in that unit."

2/ With the CWA's consent, the Director granted Rutgers' request for an extension until May 6.

alleged by Rutgers, the charge was moot, any violation of the Act was de minimis given that there was no allegation that negotiations were thwarted, delayed or otherwise hindered and a successor agreement was reached between the parties on May 13, 2015, and recurrence was speculative. Rutgers, The State University, D.U.P. No. 94-26, 20 NJPER 117 (¶25062 1994); see also, Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985). She also determined that continued litigation of this matter would only serve to increase instability and cause hostility between the parties. Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed. and Matawan-Aberdeen Reg. Teachers Ass'n, P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd NJPER Supp.2d 225 (¶196 App. Div. 1990).

On May 23, 2016, Rutgers appealed the Director's decision, asserting that if all of its allegations were accepted as true, a complaint should have issued. Specifically, Rutgers maintains that the CWA's insistence upon coalition bargaining was not a de minimis offense, that the charge is not moot despite the fact that the parties negotiated a successor agreement, and that fears of recurrence are not speculative. On June 13, CWA filed opposition to Rutgers' appeal, asserting that the Director properly exercised her discretion in determining that it would be wasteful to litigate a dispute that is moot and would, at worst, involve a de minimis violation of the Act. CWA's counsel also

attached a certification noting that he had sent correspondence to Rutgers' counsel on May 13, 2016 indicating that "[the] CWA is well aware that a union cannot insist on coalition bargaining," characterizing the complained-of conduct as an "attempt[] to persuade the University," and maintaining that "the parties proceeded to bargain and reach agreement" after Rutgers refused to engage in coalition bargaining.

As the Director did, we accept as true the allegations contained within the charge and the amended charge. In order to establish a violation of 5.4(b)(2), a charging party must demonstrate a coercive pattern of union conduct designed to interfere with the employer's choice of representative for purposes of collective bargaining. Rutgers, The State University, see also, Downe Tp. Bd. of Ed. Separately, in order to establish a violation of 5.4(b)(3), a charging party must demonstrate that the majority representative, by its actions, adversely impacted negotiations or is an impediment to reaching an agreement. UMDNJ, H.E. 2009-3, 34 NJPER 319 (¶116 2008), adopted in pt. P.E.R.C. No. 2010-12, 35 NJPER 330 (¶113 2009).

In North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193 (¶11095 1980), the Commission held that:

> [P]arties may voluntarily agree to consolidate or merge separate units for the purpose of collective negotiations. However absent voluntary agreement, neither party may attempt to force upon the other an enlargement or merger of existing units. The

> Board may lawfully insist on confining negotiations within the parameters of the existing units, i.e., require that each association negotiate solely on behalf of the employees in the unit which it represents. This rule is based on the rationale that, once an appropriate unit has been recognized or certified, the statutory interest in maintaining stability and certainty in the negotiations structure requires adherence to existing unit definitions. Accordingly, during negotiations for [a particular] unit, its negotiating representatives: (1) could not demand that the [public employer] also negotiate with regard to contracts covering the terms and conditions of employment for employees in additional units represented by other associations; (2) could not demand that any settlement for its unit must also apply to these other units; (3) could not condition its agreement on the [public employer's] offering of identical terms to these other units; and (4) could not condition its agreement on the [public employer's] settling of contracts with...other units.
>
> On the other hand, uniformity of working standards including common expiration dates are legitimate aims of associations. In furtherance of their goal for uniform contracts, associations may consult to prepare a list of common demands, and they may coordinate their negotiations strategies through interlocking or joint negotiating teams, which include members from all of the various employee units. Each of the associations, through its interlocking negotiations team, may then simultaneously, but separately, attempt to negotiate...a common contract for the employees in the unit which it represents.
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> Accordingly, [an] [a]ssociation could lawfully agree on common negotiating demands with the [various] units, could coordinate negotiating strategies, and could establish joint or interlocking negotiating teams with these other units. Thus, each one of the

> five associations may be represented by a negotiating team which includes members from all the other associations. During negotiations for [a particular unit], its joint negotiating team can demand that the [public employer] agree to certain terms for the employees in its unit; while...during separate negotiations for [another unit], its joint negotiating team can make the same demands for the employees in its unit as appropriate.

The parties' successful completion of contract negotiations in May 2015 is not dispositive with respect to the issue of mootness. See State of New Jersey (Council of NJ State College Local, AFT/AFL-CIO), P.E.R.C. No. 88-2, 13 NJPER 634 (¶18236 1987)(citing Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 36-47 (1978)); see also, Ramapo-Indian Hills Ed. Ass'n, P.E.R.C. No. 91-38, 16 NJPER 581 (¶21255 1990). However, we agree with the Director's exercise of discretion that the circumstances of this case do not warrant the issuance of a complaint and adjudication of the unfair practice charge.[3/] We also agree with the Director's determination that the charge and

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3/ See Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 79-90, 5 NJPER 229 (¶10126 1979)(noting the New Jersey Supreme Court's holding in Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 39 (1978) agreeing with the Commission's policy that the mere cessation of conduct violative of the Act does not automatically render moot a proceeding concerning such conduct and finding that it may be appropriate for PERC to adjudicate unfair practices even where the offending conduct has ceased based upon the Commission's discretion, not the charging party's, to determine whether the circumstances of the particular case warrant such a course of action).

the amended charge fail to allege facts, even if accepted as true,[4] indicating that the CWA, in response to Rutgers' decision not to engage in coalition bargaining, took any action that delayed or was in any way detrimental to the parties' negotiations. Contrast, Douds v. Int'l Longshoremen's Ass'n, 241 F.2d 278, 280-281, 283 (2d Cir. 1957)(the NLRB found a violation where on various dates, the subject labor organizations refused to bargain collectively with the employer in good faith by insisting on coalition bargaining and inducing a strike to compel such bargaining); Neptune Tp. Bd. of Ed., P.E.R.C. No. 94-79, 20 NJPER 76 (¶25033 1994), aff'd 21 NJPER 24 (¶26014 App. Div. 1994)(although a successor agreement was ultimately concluded, the Commission found that an unfair practice charge was not moot where the public employer disseminated proposed salary guides while negotiations were ongoing because of the potential coercive effect of the unfair practice on negotiations). In fact, it appears that the parties engaged in negotiations on December 3, 2014, January 20, 2015, February 2 and 17 without incident.

We have considered the totality of the circumstances in this case and agree with the Director's determination that ending this litigation will best serve the Act's main purpose of "preventing and promptly settling labor disputes." Laurel Springs Bd. of

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4/ State of New Jersey (Division on Civil Rights) and CWA and Maria Jones, P.E.R.C. No. 94-116, 20 NJPER 273 (¶25138 1994), aff'd 21 NJPER 319 (¶26204 App. Div. 1995), certif. den. 142 N.J. 571 (1995); see also, N.J.A.C. 19:14-2.1(a).

Ed., P.E.R.C. No. 78-4, 3 NJPER 228 (1977). Notwithstanding the CWA's alleged threats on September 24 and 29, 2014, Rutgers has failed to allege a coercive pattern of conduct or adverse impact on or impediment to negotiations warranting issuance of a complaint. Importantly, CWA's counsel has represented that "[the] CWA is well aware that a union cannot insist on coalition bargaining." Accordingly, we believe that this dispute has essentially been resolved, that the parties understand their future negotiations obligations, and that permitting this academic dispute to be litigated for the purposes of securing a technical order and a notice of posting would be contrary to the Act.[5/] Rockaway Tp., P.E.R.C. No. 82-72, 8 NJPER 117 (¶13050 1982); see also, Blackhorse Pike Reg. Bd. of Ed., D.U.P. No. 82-7, 7 NJPER 488 (¶12216 1981).

ORDER

The Director's refusal to issue a complaint is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Wall voted in favor of this decision. None opposed. Commissioner Voos recused herself.

ISSUED: August 18, 2016

Trenton, New Jersey

5/ Rutgers is not precluded from filing an unfair practice in the future should CWA or its counsel demand coalition bargaining or decline to negotiate on "big issues" unless the employer agrees to negotiate with multiple units.