

P.E.R.C. NO. 94-117

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SEIU, LOCAL 455/74,

Respondent,

-and-

Docket No. CI-94-38

PATRICIA FREEMAN, PATRICIA GARLAND,  
DIANE SMITH,

Charging Parties.

SYNOPSIS

The charging parties allege that Local 455/74 violated the New Jersey Employer-Employee Relations Act when it breached its duty of fair representation by failing to hold a proper contract ratification meeting. The Public Employment Relations Commission finds that the Director of Unfair Practices erred in his assumption that the charging parties were not still members of Local 455/74 at the time of the alleged ratification vote. D.U.P. No. 94-39, 20 NJPER 213 (¶25104 1994). The Commission therefore remands this matter to the Director for reconsideration in light of this factual clarification.

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Appearances:

For the Respondent, Manning, Raab, Dealy & Strum, attorneys  
(Ira A. Strum, of counsel)

For the Charging Parties, Wills, O'Neill & Mellk, attorneys  
(G. Robert Wills, of counsel)

DECISION AND ORDER

On December 23, 1993, Patricia Freeman, Patricia Garland and Diane Smith filed an unfair practice charge against their majority representative, SEIU Local 455/74.<sup>1/</sup> The charge alleges that Local 455/74 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1), (3) and (5),<sup>2/</sup> and breached its duty of fair

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<sup>1/</sup> The charge was filed against Employees Service Union, Local 74. Supporting documents reference Service Employees International Union, Local 455/74.

<sup>2/</sup> These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the 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."

representation by failing to hold a proper contract ratification meeting.

According to the charge, in June 1993, effective July 1, 1993, the charging parties withdrew from Local 455/74, joined the Old Bridge Education Association, and completed cards indicating their desire to have the Association represent them in collective negotiations. Within a week after the cards were submitted, Local 455/74 and the Old Bridge Board of Education reached agreement on a collective negotiations agreement. The Board allegedly ratified the agreement based on a letter from Local 455/74 indicating that the contract had been ratified by the membership unanimously. The charging parties allege that no ratification meeting took place, with the possible exception of one school.

On April 13, 1994, the Director of Unfair Practices refused to issue a Complaint on this charge and a related charge filed by the Old Bridge Education Association against the Board. D.U.P. No. 94-39, 20 NJPER 213 (¶25104 1994). He also dismissed as untimely a representation petition filed by the Association. As for the allegations in this charge, the Director found that the charging parties had no inherent right to participate in the ratification vote since they were no longer members of Local 455/74.

The charging parties appealed. They claim that their resignations were effective July 1, 1993 and that therefore the Director erred in finding that they were no longer members of Local 455/74 on June 24, 1993.

Local 455/74 relies on the evidence and arguments previously submitted. It claims that it was not aware of any forms whereby the charging parties sought to withdraw their membership.<sup>3/</sup> It further asserts that nothing in the law requires a labor organization to allow its members to ratify agreements.

In considering a majority representative's duty of fair representation, we have applied the standard established for private sector unions in Vaca v. Sipes, 386 U.S. 171 (1967). City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). A union's conduct toward unit members in collective negotiations and grievance handling cannot be arbitrary, discriminatory or in bad faith.

Here, the charging parties allege that they were not "permitted to vote on the agreement nor were they ever advised of the meeting to ratify." Nothing in the Act requires a union to submit a contract to its membership for ratification. But if ratification is otherwise required by agreement with the employer or by the union's own procedures, a union may breach its duty of fair representation if its actions surrounding ratification are arbitrary, discriminatory or in bad faith. Cf. Camden Cty. College Faculty Ass'n, D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987); Newark Building Trades Council, D.U.P. No. 82-34, 8 NJPER 333 (¶13151 1982). It appears that the Director's decision was based on an

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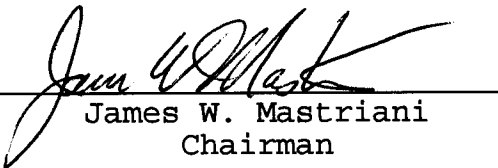
<sup>3/</sup> Local 455/74 claimed that the December 23, 1993 unfair practice charge was filed outside the six month statute of limitations. N.J.S.A. 34:13A-5.4(c). The Director found that the ratification vote took place June 24, 1993, less than six months before the filing of the unfair practice charge.

erroneous assumption that the charging parties were not still members of Local 455/74 at the time of the alleged ratification vote. We therefore remand this matter to the Director for reconsideration in light of this factual clarification.

ORDER

This matter is remanded to the Director of Unfair Practices consistent with this opinion.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration.

DATED: June 30, 1994  
Trenton, New Jersey  
ISSUED: June 30, 1994