

P.E.R.C. NO. 96-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 455/74,

Respondent,

-and-

Docket No. CI-94-38

PATRICIA FREEMAN, PATRICIA GARLAND,
DIANE SMITH,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission sustains the decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge filed by Patricia Freeman, Patricia Garland and Diane Smith against Service Employees International Union, Local 455/74. The charge alleges that Local 455/74 breached its duty of fair representation and violated the New Jersey Employer-Employee Relations Act by failing to permit the charging parties to vote on a tentative contract with the Old Bridge Board of Education and by not advising them of a contract ratification meeting. The Commission finds that there are no specific allegations that the majority representative tried to preclude certain groups of employees from voting or that it tried to improperly influence the vote. The Commission therefore concludes that the charge does not specifically allege facts that, if true, may constitute an unfair practice.

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, 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, Service Employees International Union, Local 455/74.^{1/} The charge alleges that Local 455/74 breached its duty of fair representation and 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),^{2/} by failing to

^{1/} The charge was filed against Employees Service Union, Local 74. Supporting documents reference Service Employees International Union, Local 455/74.

^{2/} These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

permit the charging parties to vote on a tentative contract with the Old Bridge Board of Education and by not advising them of a contract ratification meeting.

The Director initially dismissed the charge. D.U.P. No. 94-39, 20 NJPER 213 (¶25104 1994). We remanded, finding that the Director had erred in assuming that the charging parties were not still members of Local 455/74 at the time of the alleged ratification vote. P.E.R.C. No. 94-117, 20 NJPER 275 (¶25139 1994).

On November 7, 1994, the Director informed the charging parties that he still was not inclined to issue a Complaint. The Director found that the charging parties had not disputed that notices for a ratification meeting were posted. He also found no facts to indicate that more than one ratification meeting was necessary. He invited the charging parties to amend the factual allegations in the charge if they believed that his legal conclusions were incorrect or that additional facts would be material.

On December 7, 1994, noting that no response to his November 7 letter had been filed, the Director dismissed the charge. D.U.P. No. 95-17, 21 NJPER 27 (¶26016 1994). A miscommunication resulted in the Director's issuing this decision

2/ 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."

before receiving the charging parties' response. That response included a certification from one of the charging parties stating that she did not receive notification of a ratification vote and was never offered the opportunity to vote.

After considering the charging parties' response, the Director reaffirmed his decision not to issue a Complaint. D.U.P. No. 95-19, 21 NJPER 51 (¶26034 1994). He concluded that there is no allegation that notices were not posted, and that the allegation about the adequacy of notice is vague.

On January 17, 1995, the charging parties appealed. They claim that they should be afforded every reasonable inference at this stage of the proceedings. They claim that the failure to post notices is an inference that may and should be drawn from the allegation that they did not receive notice of the ratification vote. They assert that they would have known of the ratification meeting had notices been posted.

On January 23, 1995, Local 455/74 responded. It claims that the charging parties cannot factually contend that the notices were not posted because, by their own admission, they did not look for the notices. It urges that the appeal be denied.

We sustain the refusal to issue a Complaint. The Director informed the charging parties that they had not disputed that notices for a ratification meeting had been posted and invited them to amend their charge. Rather than do so, the charging parties submitted an additional certification stating that one of the

charging parties did not receive notification of a ratification vote and was never offered the opportunity to vote. The Director therefore drew the inference that notices of a ratification meeting had been posted and gave the charging parties the opportunity to rebut that inference. Their failure to do so reinforces the inference that notices were posted and that this case merely involves the question of whether the notices that were posted were sufficient to advise all members of the ratification meeting, a question we believe involves an internal union matter beyond the scope of this forum. There are no specific allegations that the majority representative tried to preclude certain groups of employees from voting or that it tried to improperly influence the vote. We therefore conclude that the charge does not specifically allege facts that, if true, may constitute an unfair practice.

ORDER

The refusal to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: September 21, 1995
Trenton, New Jersey
ISSUED: September 22, 1995