

P.E.R.C. NO. 94-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH PLAINFIELD BOARD OF EDUCATION,

Charging Party,

-and-

Docket No. CE-93-18

SOUTH PLAINFIELD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission sustains a decision of the Director of Unfair Practices refusing to issue a Complaint based on the South Plainfield Board of Education's unfair practice charge against the South Plainfield Education Association. The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act when it campaigned to unseat a Board member because of his viewpoints on negotiations and when it improperly used school mailboxes to advance a political agenda and to exact negotiations concessions. The Commission finds that any allegation that using the mailboxes violated the parties' collective negotiations agreement must be resolved through the procedures established in that agreement.

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Appearances:

For the Charging Party, Schwartz, Simon & Edelstein,
attorneys (Lawrence S. Schwartz, of counsel; Joel G.
Scharff and Thomas Russo, on the brief)

DECISION AND ORDER

On August 13, 1993, the South Plainfield Board of Education appealed D.U.P. No. 94-2, 19 NJPER 428 (¶24193 1993). In that decision, the Director of Unfair Practices refused to issue a Complaint based on the Board's unfair practice charge against the South Plainfield Education Association. The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b) (2) and (3),^{1/} when it campaigned to unseat a Board member because of

^{1/} These subsections 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 concerning terms and conditions of employment of employees in that unit."

his viewpoints on negotiations and when it improperly used school mailboxes to advance a political agenda and to exact negotiations concessions.

On July 16, 1993, the Director refused to issue a Complaint. D.R. 94-2. He found that the Association had the right to comment on the Board member's views about the Association and to circulate its comments to colleagues. He further found that the alleged improper use of mailboxes in violation of the collective negotiations agreement was, at most, a mere breach of that agreement, not an unfair practice.

We agree with the Director that a Complaint should not issue.^{2/} Nothing in our statute prohibits a majority representative from using school mailboxes to circulate literature to unit members supporting or opposing political candidates or positions. Any allegation that using the mailboxes violated the parties' collective negotiations agreement must be resolved through the procedures established in that agreement. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Accord, Old Bridge Bd. of Ed., P.E.R.C. NO. 87-51, 12 NJPER 844 (¶17324 1986) (challenge to Board's refusal to allow Association to distribute political flyers in mailboxes endorsing candidates dismissed on Human Services grounds).

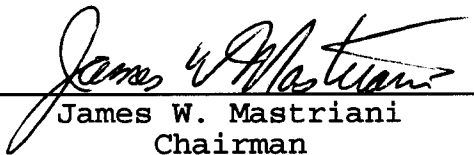
^{2/} We deny the Board's request for oral argument. Its legal position has been fully briefed.

We need not consider, as the employer urges, whether the Association had a constitutional right to circulate the disputed materials or whether the employer had a contractual right to restrict access to the mailboxes. For purposes of this decision, we assume that the employer had a right to restrict access to the mailboxes, it negotiated an agreement that included restrictions on the use of the mailboxes, and the Association breached that agreement. Even if all that is true, the Association's breach of contract would not be an unfair practice. Human Services.^{3/}

ORDER

The decision not to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: December 14, 1993
Trenton, New Jersey
ISSUED: December 15, 1993

^{3/} Under N.J.A.C. 19:14-1.6, the Director is not required to investigate the charge, assign the case to a staff member, request statements of position, or convene a conference. He may refuse to issue a Complaint if the charge fails to meet the Complaint issuance standards set out in N.J.A.C. 19:14-1.3 and 2.1. The charging party may then make timely amendments curing, if possible, any cited defects.