

D.U.P. NO. 95-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

GLASSBORO BOARD OF EDUCATION AND
GLASSBORO EDUCATION ASSOCIATION

Respondents,

-and-

Docket No. CI-94-23

JOYCE LEE WILLIAMS

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on Joyce Lee Williams' allegations that the Glassboro Education Association misrepresented her during certain events leading to and after her non-renewal as a non-tenured teacher in the Glassboro school system and that the Glassboro Board of Education's administrators interfered with her representation by the Association. The Director finds that although Williams was displeased with the way the Board handled her non-renewal, that she alleged no facts in support of her allegation that it intefered with her representation by the Association. The Director further finds that although Williams was unhappy with the Association's representation during the period leading to her non-renewal, that its representatives' actions were not arbitrary, discriminatory or in bad faith.

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Appearances:

For the Respondent Board of Education,
Montgomery, McCracken, Walker & Rhoads, attorneys
(Patricia Gordon, of counsel)

For the Respondent Teachers Association,
New Jersey Education Association
(Eugene McCann, UniServ Rep.)

For the Charging Party
Joyce Lee Williams, pro se

REFUSAL TO ISSUE COMPLAINT

On October 8, 1993, Joyce Lee Williams filed an unfair practice charge with the Public Employment Relations Commission against the Glassboro Board of Education and the Glassboro Education Association. Williams alleges that the Board violated subsections 5.4(a)(1), (3), (4) and (7)^{1/} and that the Association violated

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

subsections 5.4(b)(1) and (5)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

Williams alleges that the Association misrepresented her during certain events leading to and after her non-renewal as a non-tenured teacher in the Glassboro school system. Williams further alleges that the Board's administrators interfered with the her representation by the Association. A commission staff agent held an exploratory conference in April, 1994 and position statements were received by May 27, 1994. Williams' allegations follow.

Joyce Lee Williams was employed by the Glassboro Board of Education as an art teacher. Williams alleges that on April 16, 1993, she met with Superintendent of Schools Nicholas Mitcho and Association President Ivanetta McGill in Mitcho's office, where she signed a receipt for a letter notifying her that her she would not

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (7) Violating any of the rules and regulations established by the commission."

2/ 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; (5) violating any of the rules and regulations established by the Commission."

be offered employment for the following year^{3/}. Williams alleges that McGill told her that as a non-tenured teacher, she had no right to ask for the reasons for her non-renewal. Williams further alleges that she never received the non-renewal letter that was the subject of the receipt^{4/}.

Williams states that she hesitated to sign the receipt but did so upon McGill's advice that it was just a formality to meet State requirements that any teacher without a contract be notified before April 30th. McGill allegedly stated that the receipt was related to a mentoring program that was arranged for Williams before she received a contract at the end of June, and that McGill assured Williams that the mentoring program would not have been arranged if the district did not intend to renew her contract.

By letter of April 16, 1993, Mitcho established a mentoring program for Williams. Formal observations would be made by the principal and Assistant Superintendent during and after the mentoring period and at the end of May, 1993, the principal and the Assistant Superintendent would recommend to the Superintendent if a contract should be offered. Mitcho concluded that "It is my hope

^{3/} The receipt from Mitcho states that "I acknowledge receipt of your letter of April 16, 1993 notifying me, in accordance with N.J.S.A. 18A:27-10 that I will not be offered employment for the 1993-94 school year.". The receipt is signed and dated by Williams on April 14, 1994.

^{4/} Williams alleges that she attempted to find the letter referenced in the receipt, but was told by Mitcho, his secretary and McGill that it did not exist.

that assistance during this period will result in a recommendation to the Board for a teaching contract."

Williams alleges that she was humiliated by accepting the intervention of McGill and entering into the mentoring program, since its completion did not result in renewal of her contract. McGill was a participant in the mentoring team. Williams also alleges that McGill broke a vow of confidentiality by informing supervisors that Williams did not meet with the team frequently enough. Williams contends that she met with the team a sufficient number of times.

Williams states that before the mentoring team was formed, she had been evaluated eight times and no reasons were given for non-renewal. She was evaluated two times after that formation of the mentoring team, with one administrator listing areas where her performance could be improved. Williams was also told by administrators that she showed a lack of interest based on McGill's remark that the mentoring team had not met frequently enough. However, Williams states that the mentoring team agreed that she knew her subject matter and that she used their suggestions in classroom management. These meetings and subsequent evaluations were weekly during May and the final evaluation from Williams' principal was on May 26, 1993.

Williams states that she was not told until the last day of school, June 18, 1993, that she would not be renewed for the following year. The principal stated that she and the Assistant

Superintendent had recommended non-renewal to the Superintendent. Williams alleges that she asked McGill to provide her with representation when she approached the Board on June 23, 1993 to plead her case for reemployment. Instead, Williams alleges that McGill arranged a meeting for her on July 1, 1993, with NJEA Uniserv Representative Eugene McCann, who told her that she had no rights as a non-tenured teacher and gave her a copy of the applicable education code.

As a result of her allegedly improper representation by the Association, Williams retained her own counsel to present her case for renewal to the Board. The Board majority moved to offer her a contract, but Williams contends that she was not renewed because the Superintendent had already decided not to rehire her on April 16, 1993. He allegedly told Williams later that he was surprised that she had obtained her own attorney in lieu of continued representation by McGill.

Williams also charges that McGill interfered with her efforts to seek redress for remarks made by her immediate supervisor. However, she does not elaborate upon this allegation.

Finally, Williams charges that the "Glassboro School administrators interfered with the union representative's effective representation in my case.". She makes no other allegations against the Board.

The Board states that Williams was a non-tenured teacher at the time of her termination. Accordingly, she was given notice of

non-renewal on April 16, 1993, as required by N.J.S.A. 18A:27-10, and signed an acknowledgment of receipt on the same day. The Board contends that the notice and receipt contradict Williams' allegations that she was not informed of her non-renewal until June 18, 1993. It urges that the charge against it be dismissed.

The Association states that its President Ivanetta McGill assisted Williams throughout the spring of 1993 by meeting with her alone and with her supervisors, participating in Williams' mentoring group and by referring Williams to Uniserv Representative Eugene McCann for discussion of her rights as a non-tenured teacher. The Association also urges dismissal of the charges against it.

Williams alleges that the Board violated subsections 5.4(a)(1), (3), (4) and (7) of the Act by interfering with the Association's representation in her case. Subsection 5.4(a)(4) prohibits employers from discharging or otherwise discriminating against any employees for signing or filing affidavits, petitions or complaints or giving any information or testimony under the act. Williams' allegations against the Board concern events prior to the filing of this charge and are not related to her filing any affidavits, petitions, complaints, information or testimony under the Act. Therefore she has not alleged facts that implicate a violation of this subsection. Subsection 5.4(a)(7) of the Act prohibits employers from violating any of the rules and regulations established by the commission, but Williams does cite any rules or regulations that the Board has allegedly violated.

Subsections 5.4(a)(1) and (3) prohibit public employers and their representatives from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act and discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act. Williams' allegations express dissatisfaction with the way the Board handled her dismissal, including the mentoring program. However, Williams does not allege that her dismissal was related to protected activities under the Act. Williams' sole allegation against the Board is that it interfered with the Association's representation of her. She has alleged no facts in support of this allegation and has cited no facts that are violations of any of the above subsections of the Act. Therefore, the charges against the Board are dismissed.

Williams alleges that the Association violated subsections 5.4(b)(1) and (5) of the Act. Subsection 5.4(b)(5) prohibits employee representatives from violating Commission rules and regulations. Williams has not alleged that the Association has violated any Commission rules and regulations. Therefore, this section of the charge is dismissed.

Williams' remaining allegation is that the Association's representation prior to and after her dismissal violated subsection 5.4(b)(1) of the Act. This subsection prohibits employee organizations and their representatives from interfering with,

restraining or coercing employees in the exercise of the rights guaranteed to them by the Act. In essence, Williams alleges that the Association did not represent her fairly regarding her termination.

Majority representatives must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. A breach of the duty of fair representation occurs only when a representative's conduct toward a unit member is "arbitrary, discriminatory, or in bad faith." Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967). The Commission and New Jersey Courts have consistently applied the Vaca standard in evaluating fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981); Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Loc. 153 (Thomas Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). I find that Williams' allegations do not meet the above standard for a breach of the duty of fair representation.

Williams' allegations commence with McGill's actions at the April 16, 1993 meeting when Williams received her notice of non-renewal. Williams alleges that McGill "hoodwinked" her into signing a receipt for a notice of non-renewal which she states she did not receive. Williams does not dispute that she signed the receipt on April 16, 1994. Even if true, McGill's alleged

statements do not negate the fact that Williams signed a receipt with language explicitly referring to her non-renewal. Although the meeting leading to Williams' notice of non-renewal was undoubtedly an emotional event, her allegations regarding McGill's conduct at and after the meeting do not rise to the level of an unfair practice.

Williams' allegations relating to McGill's participation and conduct in the mentoring program also do not rise to the level of unfair practices. Although McGill perhaps believed that participation in the program would result in possible renewal of Williams' contract, McGill was never in a position to make that decision. Williams' unhappiness with the way the program was administered, McGill's participation in it, and the fact that the program did not lead to a contract are not unfair practices. None of Williams' allegations regarding McGill's conduct show that it was in any way arbitrary, discriminatory or in bad faith.

Williams' final allegation is that she asked McGill to provide her with representation at a June 23, 1993 Board meeting which she attended to plead her case for reemployment. She alleges that instead, McGill arranged a meeting for her on July 1, 1993, with NJEA Uniserv Representative Eugene McCann. However, Williams also states that she retained her own counsel to present her case for renewal to the Board as a result of allegedly improper representation by the Association. The sequence of these events as pled by Williams is unclear. It cannot be determined if the

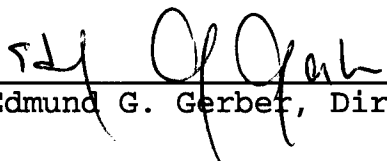
Association denied her representation at the meeting before she retained an attorney, or because she had chosen to retain counsel of her own choosing. Given these facts, the Association's actions do not constitute an unfair practice. A union is not obligated to provide a representative at every request. It may evaluate the need to do so objectively, without committing an unfair practice. However, Williams does not allege any reason for the Association's denial of representation at the Board meeting. Without further facts, this allegation is not an unfair practice.

The Superintendent's alleged remark that he was surprised that Williams had obtained her own attorney rather than continue to be represented by McGill is irrelevant.

Statements made by McCann at the July meeting with Williams and McGill also do not rise to the level of unfair practices. Although Williams was probably displeased with the information from McCann, it was not an unfair practice to inform her of the limited rights she had as a non-tenured employee.

The Commission's complaint standard has not been met. N.J.A.C. 19:14-2.1. Accordingly, I decline to issue a complaint and the charges against the Board and the Association are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: November 7, 1994
Trenton, New Jersey