

D.U.P. NO. 91-9

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

In the Matter of

NEW JERSEY EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-90-42

ALICE LINDSAY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint and Notice of Hearing on a charge that the NJEA violated its duty of fair representation by refusing to pay litigation costs arising out of a defamation lawsuit filed by charging party against a union representative and a local union.

The Director determined that NJEA's refusal to pay for litigation filed against it was not arbitrary, discriminatory or made in bad faith.

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Appearances:

For the Respondent
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Richard A. Friedman, of counsel)

For the Charging Party
Alice Lindsay, pro se

REFUSAL TO ISSUE COMPLAINT

On January 5, 1990, Alice Lindsay ("Charging Party") filed an unfair practice charge against the New Jersey Education Association ("NJEA") alleging that she learned in late July 1989 that the NJEA provided legal counsel to a "fellow teacher" in a defamation law suit and denied counsel or assistance to her. Charging party filed the action against both Virginia Moravek, "who was incidentally president of the Central Jersey Music Educators Association" ("CJMEA") in October 1988, and the NJEA. Charging party alleges that the NJEA's refusal to provide her legal assistance violates subsection 5.4(b)(1), (2), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

The Commission has delegated its authority to issue complaints to me and established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the charging party's allegations, if true, may constitute unfair practices within the meaning of the Act.^{1/} If this standard has not been met, I may decline to issue a complaint.^{2/}

On January 26, 1990, the NJEA filed a letter claiming that the charge is untimely filed, that it concerns an internal union matter and that it did not act arbitrarily, capriciously or in bad faith. The NJEA also asserts that, "it was only as a consequence of charging party's suit against an affiliate and its president, at least partly in her capacity as such, that the other teacher...obtained legal assistance...." The NJEA enclosed a copy of a December 1, 1989 chancery division transcript in Lindsay v. Moravek, et al., docket no. C17600-88, a summary judgment proceeding.

On February 7, charging party filed a response asserting that she did not receive the NJEA's rejection of her request for reimbursement of fees until December 1989. She asserts that the NJEA's representation of "one member against another is contrary to Saginario v. Attorney General, 87 N.J. 480 (1981)."

1/ N.J.A.C. 19:14-2.1.

2/ N.J.A.C. 19:14-2.3.

The charging party seeks to have the Association reimburse her for the lawsuit she brought against an affiliate of the Association. Lindsay filed her defamation suit against Moravek and the CJMEA, alleging that Moravek defamed her, CJMEA wrongfully interfered with her membership rights, and that Moravek had tortiously interfered with her contractual relations with the CJMEA.^{3/} In the transcript of argument on a motion for summary judgment filed by Moravek and CJMEA in the Chancery Division suit, Lindsay's attorney asserted, "[the defamatory] words were present in letters that [Ms.] Moravek wrote...or copied to school administrators. Many of these letters were written on CJMEA stationary presumably in Moravek's capacity as president of that organization." [transcript at p. 12]. The letters apparently state that Lindsay is a "liar", "manipulative", "unprofessional" and that she "maligns" other members of her department. Lindsay's attorney also stated in court:

At the very least a question of fact exists in regard to whether Ms. Moravek and the CJMEA's actions went beyond commonly accepted standards of behavior.... [p. 19]

...it's our position that there was an impermissible intermingling by, an overlap by Ms. Moravek between what she knew and what her powers were as CJMEA president.... [p. 20]

^{3/} Lindsay asserted that she was first aware of NJEA's legal representation of Moravek and the CJMEA on July 9, 1989. I assume without deciding that fact and find that the charge was timely filed on January 5, 1990.

On July 6, 1990, we issued a letter advising the parties that it appeared that the charge did not meet the Commission's complaint issuance standard. We tentatively concluded that the allegations did not support the charge that the NJEA violated its duty of fair representation.

On July 24, 1990, Lindsay filed a response, asserting that the CJMEA had "unfairly and without any basis" suspended her participation in programs, that the "entire proceeding" arose from Moravek's counterclaim and that the NJEA is funding a lawsuit against her out of her "union dues."

On August 1, 1990, the NJEA filed a letter, asserting that it provided counsel to Lindsay for her dispute with her public employer and she refused the attorney's services. It also asserted that Moravek's counterclaim was filed only after Lindsay filed an action against CJMEA and Moravek, and that the suit was withdrawn on the date of the summary judgment motion. It contends that in this regard, it was merely defending against Lindsay's "spurious charges."

N.J.S.A. 34:13A-3(e) states that the term "representative" "shall include any organization...designated by a...public employee, group of public employees or public employee association to act on its behalf and represent it or them." N.J.S.A. 34:13A-5.3 entitles a majority representative "to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination...."

In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the Supreme Court set the standard for determining whether a labor organization violated its duty of fair representation. The Court held:

...a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith. [Id. at 190, 64 LRRM 2376].

New Jersey has adopted the Vaca standard in deciding fair representation cases. See D'Arrigo v. N.J. State Bd. of Mediation, ___ N.J. ___ (1990); Saginario v. Attorney General, 87 N.J. 480 (1981).

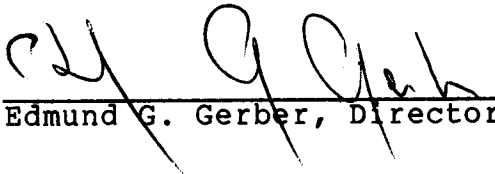
The Commission's complaint issuance standard has not been met. Both Moravek and the CJMEA, an employee representative, were named defendants in Lindsay's defamation suit. Counsel for charging party maintained that there was an "intermingling" of Moravek's "individual" communications and those she made on behalf of the CJMEA. NJEA's decision to represent Moravek and not Lindsay was not arbitrary, capricious or in bad faith. Moravek's alleged defamatory conduct as an officer of the employee organization is implicated; NJEA's defense against such allegations seems no less reasonable than its refusal to finance litigation filed against it and one of its officers. Its decision appears related to legitimate union objectives. See Amalgamated Assoc. of Street Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

In Saginario, the New Jersey Supreme Court stated that the issue was whether a "public employee, whose interest conflicts with the position taken by the employees' majority representative in invoking and processing a matter through the grievance procedure and arbitration, must be given notice and opportunity to be heard." [Id. at 482]. This dispute does not concern Lindsay's opportunity to be heard or the "use of the machinery for dispute resolution" which leads to the "prompt settlement of labor disputes in the public sector." N.J.S.A. 34:13A-2.

This case (insofar as it implicates the duty of fair representation) concerns an internal union matter, that is, the relationship of one Association member (Lindsay) to the Association. The Commission has declined to intercede in matters involving the internal affairs of unions. In City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982) [aff'd App. Div. Dkt. No. A-768-82T1 (7/22/83)], the Commission stated that, "...labor organizations are essentially private associations...and...that the Act's conferral of unfair practice jurisdiction does not empower it [the Commission] to resolve intra-union disputes." Failure to provide counsel or payment for legal fees, absent other factors, is an internal union matter and not an unfair practice. N.J.E.A. (Esser), P.E.R.C. No. 90-113, 16 NJPER ____ (¶____ 1990); Bergen Community College Faculty Ass'n, P.E.R.C. No. 84-117, 10 NJPER 262 (¶15127 1984).

Accordingly, I refuse to issue a Complaint and dismiss the unfair practice charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 28, 1990
Trenton, New Jersey