

D.R. No. 2012-6

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

RIDGEFIELD BOARD OF EDUCATION,  
Public Employer,

-and-

RIDGEFIELD TEACHING ASSISTANTS  
ASSOCIATION,  
Employee Organization,

Docket No. RD-2012-002

-and-

ILIANA BENITEZ,  
Petitioner.

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RIDGEFIELD BOARD OF EDUCATION,  
Respondent,

-and-

Docket No. CO-2011-494

RIDGEFIELD TEACHING ASSISTANTS,  
ASSOCIATION,  
Charging Party.

SYNOPSIS

The Director of Representation orders that an unfair practice charge block the processing of a representation (decertification) petition seeking to decertify a majority representative of a collective negotiations unit of teaching assistants employed by a municipal board of education.

The charge was filed about three months before the petition was filed and alleges that the Board did not offer re-employment to four named assistants who were Association representatives and employed by the Board as assistants for many years. The charge alleges that the Board offered re-employment to 78 of 86 assistants.

The Director determined that the majority representative's request to block meets the standard set forth in State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981). The Director also determines that the charge meets the standard for issuing a Complaint and directs that a hearing be conducted on the allegations of the charge N.J.A.C. 19:14-2.1; In re Bridgewater Tp., 95 N.J. 235 (1984).

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ASSOCIATION,  
Charging Party.

Appearances:

For the Public Employer/Respondent,  
Ferrara, Turitz, Harraka & Goldberg, attorneys  
(Stanley Turitz, of counsel; Marla Wolfe Taus, on the  
brief)

For the Employee Organization/Charging Party,  
Oxford Cohen, P.C., attorneys  
(Benjamin A. Spivack, of counsel)

For the Petitioner,  
Iliana Benitez, pro se

**DECISION**

On September 29, 2011, Ms. Iliana Benitez (Petitioner) filed  
a representation petition, seeking to decertify Ridgefield

Teaching Assistants Association (Association) as the majority representative of a collective negotiations unit of about 80 teaching assistants employed by Ridgefield Board of Education (Board). The Association refuses to consent to an election, asserting that its pending unfair practice charge, as amended, against the Board (CO-2011-494) should block further processing of the petition. The Petitioner and Board object to any blocking effect of the charge, urging that the petition be processed to a secret ballot election.

The petition is timely and accompanied by an adequate showing of interest among unit employees. N.J.A.C. 19:11-1.3; 2.8. The Association has intervened in this matter, based upon its current collective negotiations agreement with the Board covering the petitioned-for employees. N.J.A.C. 19:11-2.7.

The unfair practice charge was filed on June 28, 2011 and amended on October 6, 2011. The charge alleges that in March, 2011, all 86 full-time teaching assistants were advised that they would not be rehired for the 2011-2012 school year and that some teaching assistants may be offered part-time positions, instead; that the Board and the Association negotiated an agreement providing ". . . single medical insurance coverage with appropriate modifications to the collective [negotiations] agreement" in return for a restoration of 78 full-time teaching assistant positions; that in March, 2011, Board Counsel advised

NJEA UniServ representative Norman Danzig that teaching assistants will be offered positions in order of seniority, unless a teaching assistant was cited for discipline; that three teaching assistants not offered reemployment are Association President Fran Ganci (with 15 years' seniority); Association building representative Delores Bickford (with 17 years' seniority); and negotiations committee member Roberta Gennaro (with more than 10 years' seniority); that in January, 2011, teaching assistant Terri Calutti (Association membership chairperson) was laid off [and not offered reemployment], together with two other assistants; that the Board's actions have "stripped" the Association of all of its officers, thereby ". . . chilling the atmosphere for support and participation in the Association," and violating 5.4a(1), (2), (3) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The amended charge alleges that all four named

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1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

teaching assistants/Association active members were not rehired ". . . solely because they were active members and participants of the Association."

The filing of an unfair practice charge or issuance of an unfair practice Complaint does not automatically block the processing of a representation petition. The decision on whether a charge should block a petition is within the Commission's discretion. State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981).

The legal standard for determining whether an unfair practice charge will block a representation election is set forth in State of New Jersey. The charging party must first request that its charge block the representation matter. It next must file "documentary evidence" establishing reason(s) that the conduct underlying the charge prevents a free and fair election. Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988). The Director of Representation will exercise discretion to block if, under all the circumstances, the employees could not exercise their free choice in an election. See Village of Ridgewood, D.R. No. 81-17, 6 NJPER 605 (¶11300 1980).

In State of New Jersey, the Commission adopted these factors in evaluating whether a fair election can be conducted during the pendency of the unfair practice charge:

The character and the scope of the charge(s) and its tendency to impair the employee's free choice; the size of the working force and the number of employees involved in the events upon which the charge is based; the entitlement and interests of the employees in an expeditious expression of their preference for representation; the relationship of the charging parties to labor organizations involved in the representation case; a showing of interest, if any, presented in the R case by the charging party; and the timing of the charge. [NLRB Case Handling Manual, Section 11730.5]

On October 13, 2011, we wrote to the parties, advising of the standards for blocking the processing of the decertification petition and setting forth a schedule for their submissions. On November 3, 2011, the parties met and did not informally dispose of the request to block the petition.

The Commission's policy is to expedite the processing of representation disputes so that the question of whether employees wish to be or not to be represented by an employee organization for purposes of collective negotiations can be promptly resolved in a secret ballot election. See LEAP Academy Univ. Charter Sch. Bd. of Trustees, D.R. No. 2006-17, 32 NJPER 142 (¶65 2006). We are accordingly cautious about permitting an unfair practice charge to block a representation petition.

I find that the totality of conduct alleged in the Association's unfair practice charge and amended charge, if proven, so taints the election process that a free and fair election cannot be held until the charge is remedied.

The Association alleges that the Board violated 5.4a(1) and (3) of the Act by refusing to rehire four named Association representatives, each with many years of Board employment, for the purpose of stripping the Association of all representatives, thereby chilling support for the Association among unit employees. Association President Frances Ganci filed a certification attesting that she has been president since 2003, when the Association was formed; that in March, 2011, all full-time teaching assistants were notified that they would not be rehired for the 2011-2012 school year and that some may be offered part-time positions.

The Association and the Board filed copies of their "modification agreement" signed on May 31, 2011 and June 9, 2011, respectively. The agreement provides "employee only" health care insurance for full-time teaching assistants, together with an employee's option to purchase dependent coverage through payroll deductions. The agreement also modifies and/or eliminates other provisions of the collective negotiations agreement, which extends from July 1, 2009 through June 30, 2012. In particular, Article 16 (Reduction in Force) is eliminated. That article extended priority in filling vacant positions to "affected employees," at the Board's discretion. The agreement also increases the number of hours teaching assistants could work and remain "part-time."

Ganci certifies that 78 [of 86] full-time teaching assistants were offered new full-time positions, excepting [among others] herself, Bickford (past vice president and member of negotiations team), Gennaro (past secretary, building representative); and Calutti (membership chairperson, building representative). She certifies that Association vice president George Wagner was rehired but has refused the position of Association president, stating, ". . . if I become president, I'd be fired." She also certifies that new membership chairperson Patricia Gross resigned that post in May or June, 2011 and Treasurer Denise Carelli resigned her post in May, 2011.

The Board has filed a reply, together with documents, contesting many allegations in the charge, as amended. It has not contested the number of full-time teaching assistants employed in the 2010-2011 school year; the number offered employment in the 2011-2012 school year; and the named Association representatives not offered employment in the 2011-2012 school year. It has not filed any certifications.

I assume the veracity of statements set forth in certifications for purposes of deciding the blocking effect of the unfair practice charge. The charge was filed three months before the decertification petition was filed, indicating a sequence of events which is consistent with the allegations in the charge and with the filing of the above-captioned



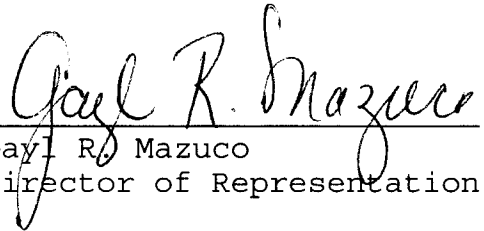
representation matter. Specifically, in the fall of 2011, Association representatives were not employed and were unavailable in the school(s) to explain or defend the Association, following the concessionary "modification agreement" signed in June. Considering the uncontested number of full-time teaching assistants offered reemployment in the 2011-2012 school year and the four Association representatives not offered reemployment, (despite their lengthy employment by the Board) I find that the Board's alleged retaliatory conduct, if proved, has a chilling affect on employees' rights to support an employee organization. In re Bridgewater Tp., 95 N.J. 235 (1984); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). It simultaneously creates an atmosphere in which a free and fair election cannot be conducted.

I find that the allegations in the charge, if true, may constitute unfair practices on the part of the Board and that formal proceedings should be instituted to permit the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. Under the circumstances of these cases, I am pending further processing of the Petitioner's decertification petition until the unfair practice charge, as amended, can be adjudicated.

ORDER

A Complaint is issued on unfair practice charge docket no. CO-2011-494, which blocks further processing of representation petition docket no. RD-2012-002. The petition shall be blocked until the charge is resolved.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Gay R. Mazuco  
Director of Representation

DATED: November 22, 2011  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by December 2, 2011.