

D.U.P. No. 2011-11

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

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Respondent,

-and-

IRVINGTON EDUCATION ASSOCIATION,

Docket No. CI-2009-040

Respondent,

-and-

SHARON STRINGER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Sharon Stringer against her employer, Irvington Board of Education, and her majority representative, Irvington Education Association. The charge alleges that the Board violated 5.4a(2), (3), (5), and (7) when in 2005 it negotiated directly with her about compensation for work outside her job title, and for failure to compensate her in 2006 and 2007. The charge also alleges that the Association violated 5.4b(3) and (5) of the Act when in 2007 it filed an untimely and incomplete grievance contesting Stringer's compensation. The Director finds that Stringer was not prevented from filing a timely charge, and, therefore, her allegations are time barred. Additionally, even if the Director assumed the charge was timely, the allegation still would not meet the complaint issuance standard. Accordingly, the Director declines to issue a complaint.

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Appearances:

For the Respondent - Board,
Hunt Hamlin and Ridley, attorneys
(Ronald Hunt, of counsel)

For the Respondent - Association,
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,
attorneys
(Genevieve Murphy-Bradacs, of counsel)

For the Charging Party,
Damico, Del Sardo & Montanari, LLC
(Michael J. Montanari, of counsel)

REFUSAL TO ISSUE COMPLAINT

On March 27, 2009, Sharon Stringer (Stringer) filed an unfair practice charge against her employer, the Irvington Board of Education (Board) and her majority representative, the Irvington Education Association (Association). The charge

alleges that the Board violated 5.4a(2), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), in 2005 when it negotiated directly with her about compensation for work outside her job title, and again in 2006 and 2007 when it failed to compensate her in accordance with its promise. The charge further alleges that the Association violated 5.4b(3) and (5)^{2/} of the Act, in 2007 when it filed an untimely and incomplete grievance contesting the Board's refusal to pay the compensation promised to her and negligently failed to include a request for compensation for 2006.

The Respondents deny any violation of the Act and assert that the underlying compensation issues have been litigated and settled and that the charge is untimely. Both the Board and

^{1/} These provisions prohibit public employers, their representatives or agents from: (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 or employees in that unit, or refusing to process grievances presented by the majority representative; (7) Violating any of the rules and regulations established by the Commission.

^{2/} These provisions prohibit employee organizations, their representative or agents from: (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.

Association filed letters and documents that were also provided to Stringer. Stringer filed replies to the letters. We have investigated the issues raised in the charge.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. On May 13, 2011, Jonathan Roth, Deputy Director of Unfair Practices wrote to the parties, advising that he was not inclined to issue a complaint in this matter and set forth the reasons for that conclusion. Deputy Director Roth provided the parties an opportunity to respond. No party filed a response. Having independently reviewed the matter, and based upon the following, I find that the complaint issuance standard has not been met.

From 2002 through 2006, Stringer performed secretarial work in the Board's media services department. During the period, Stringer worked on a grant application, "E-Rate Application" ("E-Grant") for additional funds. In April 2005, after having performed the work for three years, the Board informed her and her co-workers that it would compensate them for the work. Stringer alleges: "The Board of Education negotiated directly

with Ms. Stringer and although she was promised compensation they had never come to terms" (Unfair practice charge, paragraph 1).

The Board apparently failed to pay Stringer for the work and in November 2006, a year and a half after the Board asked her to perform it, she asked the Association to file a grievance. On November 8, 2006, Ronald J. Ricci, Stringer's attorney at that time, wrote a letter to NJEA Uniserv Representative Dennis Grieco, advising that Stringer was owed compensation for having been paid at the wrong salary step and for the "e-grant" work she had performed over the previous four years. He asked Grieco to file the appropriate grievance on her behalf. (Ricci letter November 8, 2006).

In 2006, the Association learned that Stringer had been paid incorrectly for a number of years due to an erroneous step placement in the salary guide, dating to 1999 or 2000. The Association asserts that when it advised Stringer of the error, she replied that she had retained an attorney who was handling the matter.

The Association investigated the issues raised by Stringer. On December 15, 2006, Association attorney Louis P. Bucceri wrote a letter to Greico, advising that he had met with Stringer, (as requested by Grieco) on December 4. Bucceri wrote that during the meeting he had addressed the pay step and "e-grant" issues with Stringer, and that Stringer said she did not want him to do

anything because three days earlier, on December 1, she had been told that the Board would give her the remedy she was seeking. On December 12, 2006, Stringer notified Bucceri that the Board offered a sum less than she would accept and that she wanted to reject the offer and proceed with the grievance. Stringer also asked Bucceri to speak with her attorney. Bucceri explained to Ricci that he believed that pursuing retroactive relief was tactically unwise, and that the prospective salary change she already received was not required and might be revoked if a grievance was filed. Bucceri wrote:

As to the e-grant work, in the absence of a contract provision providing for a stipend or a Board agreement to pay, there is no basis for a claim. School Boards are not bound by administrative promises. Ms. Stringer should have grieved the increases in workload at the time it took place. [Bucceri letter December 15, 2006]

On December 21, 2006, Grieco submitted a level three grievance to Superintendent Ethel Davison, (Association Exhibit C). The grievance sought back pay for assigning Stringer to an incorrect step on the salary guide, as well as compensation for "e-grant" work. Grieco sent a copy of the letter to Stringer, Association President Madeline Edwards, Bucceri, and Ricci (Association Exhibit C).

On January 12, 2007, Grieco sent another letter to Davison, copying the same individuals listed in his previous letter, seeking to move the grievance to level four, due to the Board's

failure to respond to the prior letter and grievance (Association Exhibit D).

By September 14, 2007, the grievance had proceeded to an arbitrator and on that date an agreement was reached between Stringer, the Association and the Board. The Agreement provides:

1. In full settlement of NJPERC Docket No. AR-2007-589, the Irvington Board of Education ("Board") will compensate Sharon Stringer ("Grievant") in the total amount of Twenty-One Thousand Five Hundred Dollars (\$21,500.00).
2. The payments referenced above will be made in two installments, as follows: \$10,000.00 by December 31, 2007; and \$11,500.00 by July 30, 2008.
3. Conditioned upon receipt of the payments mentioned above, the grievance in this matter is deemed satisfied.
4. The parties, whose signatures appear below, represent that they have the authority to enter into this Agreement, and also agree to take all good faith measures to implement the terms of this Agreement.
5. The grievant is satisfied that the Association has represented her interest in good faith and without discrimination throughout this proceeding.
6. This agreement finally and fully resolves all issues and claims asserted (or which could have been asserted) against one another in this proceeding by the Employer, the Association, and the grievant.
7. By entering into this Agreement, neither party admits to any fault or liability under the Collective Bargaining Agreement or otherwise.

8. This agreement will be without precedent to future labor disputes between the parties.

The agreement was signed by Board representatives, Association representatives and Stringer (Association exhibit E).

The next day, on September 15, 2007, and despite having signed an agreement which ". . . finally and fully resolve[d] all issues and claims asserted (or which could have been asserted) against one another," Stringer issued a letter to Edwards, with a copy to Grieco, asserting that she was promised back pay for "e-work" she had done for four years, that she ". . . [did not] care about what happened Friday [September 14] [and that] one issue has nothing to do with the other" (Association Exhibit F).

On September 26, 2007, Edwards filed a second grievance with Superintendent Davison, with copies to Stringer and Grieco. The grievance alleged that Stringer did not receive "stipends due in her work" of the "e-rate applications for the years 2002 through 2005" and requested payment of \$20,000 to Stringer for the four years (Association Exhibit G). At no time did Stringer advise the Association or Edwards that the grievance failed to request compensation for work performed in 2006.

On September 24, 2008, an arbitrator conducted a hearing on the second grievance (Association exhibit I).

On October 6, 2008, the arbitrator issued an award, dismissing the grievance as untimely and finding that the grievance was Stringer's claim for compensation for work

performed in 2002-2005. The arbitrator noted that the contractual limitations period was 30 days from the "occurrence complained of"; that Stringer knew of this time limit; and elected to wait to file the grievance until after the contractual limitations period (Association Exhibit I).

ANALYSIS

Stringer alleges that the Board violated the Act by dealing directly with her in 2005 regarding compensation; failing to negotiate with her majority representative, and by failing to pay her a proper amount. Stringer alleges that the Association violated the Act by not filing a timely or complete grievance.

N.J.S.A. 34:13A-5.4(c) provides that:

[N]o complaint shall issue based on any unfair practice charge occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six-month period shall be computed from the day he was no longer so prevented.

In determining whether a party was "prevented" from filing a timely charge, we consider the circumstances of each case and assess the Legislature's objectives in prescribing the time limits as to a particular claim. The word "prevent" ordinarily connotes factors beyond a complainant's control, disabling him or her from filing a timely charge, and it includes all relevant considerations bearing upon the fairness of imposing the statute of limitations. Kaczmarek v. New Jersey Turnpike Auth., 77 N.J.

329 (1978) (Court transferred case to Commission where employee filed court action within six months of alleged unfair practice). Relevant considerations include whether a charging party sought timely relief in another forum; whether the respondent fraudulently concealed and misrepresented the facts establishing an unfair practice; when a charging party knew or should have known the basis for its claim; and how much time passed between the contested action and the charge. State of New Jersey, P.E.R.C. No. 2003-56, 29 NJPER 93 (¶26 2003).

The charge was filed on March 29, 2009. A timely charge would have to allege unlawful conduct within 6 months before that date (i.e., between September 29, 2008 and March 29, 2009) or allege that Stringer was prevented from filing a timely charge by the Association's breach of the duty of fair representation.

It appears that none of the conduct giving rise to the charges against either Respondent - the Board's alleged direct dealing in 2005, and failure to compensate her for the e-grant work (2005 to 2006), or the Association's alleged delay and negligence in filing her grievance - occurred in the statutory period.

Association Exhibit C, a December 21, 2006 letter and initial Association grievance from Greico to the Superintendent was simultaneously copied to Stringer, demonstrating that on that date she knew of the Association's actions. Neither Stringer nor

her attorney have disputed that she received the letter and first grievance and was aware of them. In that grievance, the Association sought compensation for both the e-grant work and placement on the correct step of the guide from 2002 to 2006. I find that the statute of limitations commenced on or about December 21, 2006.

Stringer elected to cooperate in the processing of that grievance, ultimately signing a written settlement of it in September 2007. The document provides in part that Stringer was satisfied that the ". . . Association had represented her interests in good faith and without discrimination" and that the agreement ". . . finally and fully resolved all issues and claims that could have been asserted by . . . the Association and Grievant" (Association Exhibit E). The next day, Stringer asked the Association to file a new grievance, which resulted in an October 2008 arbitration award dismissing the grievance as untimely. Even if I assume that the statute of limitations period commenced in September 2007 for a possible charge against the Association, Stringer could have filed a timely charge not later than March 2008.

Under these circumstances, I find that Stringer was not prevented from filing a timely charge against either the Board or the Association. Any charge against the Board should have been filed in 2005 or 2006 because Stringer knew of the Board's

conduct at that time. Similarly, the charge against the Association should have been filed in 2006 or 2007, because Stringer knew of the Association's conduct at that time. Even if I assume that Stringer's allegations are timely, I am inclined to dismiss them because they do not meet the complaint issuance standard.^{3/}

Sections 5.3 and 5.4b(1) of the Act require an employee representative to represent all unit employees fairly in negotiations and contract administration. A breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the negotiations unit is arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. 171 (1967). Our Supreme Court has adopted this standard. Saginario v. Attorney General, 87 N.J. 480 (1981); see also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

Stringer did not seek timely relief in another forum, and the charge does not allege that the Board or Association fraudulently concealed facts. The Association promptly

^{3/} Specifically, Stringer alleged no facts indicating that the Board violated 5.4a(2) and (3) of the Act. Nor does an individual have legal standing to allege that an employer violated 5.4a(5) of the Act unless the charge sets forth a colorable allegation that the majority representative violated its duty of fair representation. I find that Stringer has not alleged facts indicating a breach of the duty of fair representation. (Stringer did not allege that the Association violated 5.4b(1) of the Act.)

investigated Stringer's claims; obtained the opinion of counsel; responded to her December 12, 2006 request to proceed by filing a grievance on December 21, 2006; and advanced the grievance to arbitration. These undisputed facts do not indicate union conduct that is arbitrary, discriminatory or in bad faith. The first grievance resulted in a settlement agreement that Stringer signed and which purported to dispose of the issues raised in the grievance. That her claim for payment for work performed in 2006 was not included in the grievance does not amount to an unfair practice, even if true. Proof of mere negligence, standing alone, is not sufficient to prove a breach of the duty of fair representation. OPEIU (Wasilewski), P.E.R.C. No. 98-131, 24 NJPER 256 (¶29122 1998).^{4/}

Finally, Stringer has not specified any Commission rule or regulation which the Association violated. Accordingly, Stringer's charge that the Association violated 5.4b(5) of the Act is dismissed. See High Point Reg. Bd. of Ed., D.U.P. No. 80-23, 6 NJPER 214, 215 (¶11105 1980).

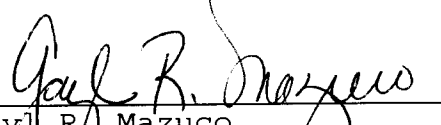
^{4/} Stringer, individually does not have legal standing to allege that the Association violated 5.4b(3) of the Act. See, County of Hudson (Konecko/Latongia), P.E.R.C. No. 2010-15, 35 NJPER 346 (¶1116 2009), aff'g. D.U.P. No. 2009-11, 35 NJPER 234 (¶83 2009)

Under all these circumstances, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{5/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Gayl R. Mazuco
Director of Unfair Practices

DATED: June 10, 2011
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to
N.J.A.C. 19:14-2.3.**

Any appeal is due by June 20, 2011.

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