

D.U.P. NO. 2023-15

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

In the Matter of

PLAINFIELD EDUCATION ASSOCIATION  
AND NEW JERSEY EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-2017-019  
CI-2019-014

MICHAEL OMAN WASHINGTON, SR.,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses two unfair practice charges filed by Michael Oman Washington (Washington) against his majority representative, Plainfield Education Association (Association) and the New Jersey Education Association (NJEA). In these charges, Washington alleges that the Association and the NJEA violated their duty of fair representation by inappropriately handling a previous unfair practice charge filed on his behalf against his employer, Plainfield Board of Education (Board). Washington alleges that the Association and the NJEA inappropriately refused to change their legal counsel upon his request, inappropriately decided to settle the previous charge, and inappropriately refused to file unspecified grievances on his behalf after settling the previous charge, in violation of sections 5.4b(1), (3) and (5) of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq.

D.U.P. NO. 2023-15

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

In the Matter of

PLAINFIELD EDUCATION ASSOCIATION  
AND NEW JERSEY EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-2017-019  
CI-2019-014

MICHAEL OMAN WASHINGTON, SR.,

Charging Party.

Appearances:

For the Respondents,  
Zazzali Fagella Nowak Kleinbaum and Friedman, attorneys  
(Richard A. Friedman, of counsel)

For the Charging Party,  
Pro se, Michael Omar Washington, Sr.

**REFUSAL TO ISSUE COMPLAINT**

On February 13, 2017, Michael Oman Washington filed an unfair practice charge against his majority representative, Plainfield Education Association (Association), including Association President Eric Jones (Docket No. CI-2017-019). Washington alleges that the Association violated its duty of fair representation by inappropriately handling a previous unfair practice charge it filed on his behalf against his employer, Plainfield Board of Education (Board). Washington alleges that the previous charge arose from the Board's transfer of him from his position as a technology resource teacher, and that the

Association's inappropriate handling of that charge included its inappropriate refusal to change its legal counsel upon his request, and its inappropriate decision to settle the charge. Washington further alleges that the Association inappropriately refused to file unspecified grievances on his behalf after settling the previous charge. Washington alleges in this unfair practice charge that the Association's actions violate sections 5.4b(1), (3) and (5) of the Act.<sup>1/</sup>

On June 4, 2017, Washington filed a letter consisting of numerous additional allegations of fact regarding the Association's handling of the previous charge. Washington alleges that Association President Jones "pulled a 'bait and switch'" on him with regard to the previous charge when Jones "pretended to be willing to assist" him by "visiting [his] classroom, speaking ill of the supervisor (to gain [his] trust), hearing [his] request for [Jones] to ask NJEA to provide new counsel," and then "instructing the [Association's] executive committee to vote on abandoning [his] case, without [his] consent." Washington alleges that the settlement of the previous

---

<sup>1/</sup> 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;" "(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 the unit;" and "(5) Violating any of the rules and regulations established by the commission."

charge resulted in "unfavorable conditions," causing unspecified "defamation upon" him. Washington also alleges that between August, 2016 and January, 2017, he pleaded with the Association's leadership to file an unspecified grievance on his behalf and the Association refused, resulting in his being, "stagnated both professionally and financially" due to his inability to "return to [his] role as Technology Resource Teacher."

Washington alleges that he disagreed with the Association's counsel's acceptance of the Board's "unreasonable settlement offer" in the previous charge and he requested alternate counsel, "as no attorney should willingly consent or conspire to place any member in harm, professionally, via legal proceedings."

Washington also alleges that the Association's attorney has alleged "corruption" on the part of PERC hearing officers in stating and writing that "these 'Christie appointees' are not allowing us to win cases." Thus, Washington alleges that the Association's attorney "has abandoned his responsibility to provide diligent representation because of philosophical differences and [Washington's] objections to [the attorney's] condescension."

On October 31, 2018, and November 7, 2018, Washington filed a second unfair practice charge and then an amended second charge, respectively, against the New Jersey Education Association (NJEA) (Docket No. CI-2019-014). In this second

charge, Washington includes allegations similar to those in Docket No. CI-2017-019 regarding NJEA's actions. Washington alleges in this second charge that NJEA's actions similarly violate sections 5.4b(1), (3) and (5) of the Act.

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. I find the following facts.

As of the date of the filing of both of these charges, Washington was employed by the Board in an unspecified non-instructional title, but previously held the title of technology resource teacher. He has also been an active member of the Association, previously serving as an Association representative and grievance chair. Washington left his employment with the Board immediately following the filing of the second charge on October 31, 2018.

Prior to the filing of these two charges, the Association filed three separate charges against the Board on Washington's behalf. These three previous charges bear the following docket numbers: 1) Docket No. CO-2009-146; 2) Docket No. CO-2014-167; and 3) Docket No. CO-2015-060. In the first previous charge,

Docket No. CO-2009-146, filed on October 27, 2008, Washington alleged that the Board violated sections a(1) and (3) of the Act when it discriminated against him due to his activities as an Association building representative. Specifically, Washington alleged that in retaliation for his activities as a building representative, the Board transferred him in September 2005 from the Hubbard School to the Evergreen School. This charge was settled on November 11, 2014,<sup>2/</sup> and withdrawn on November 17, 2014. Thus, as this first charge was withdrawn almost two years earlier than the September 26, 2016 settlement specified by Washington in the first instant charge, this is not the matter referenced in that charge.

The second previous charge, Docket No. CO-2014-167, involved an alleged violation of Washington's Weingarten rights, where Washington was allegedly subjected to a disciplinary interview but was denied union representation. This second charge was dismissed by the Commission on March 7, 2016, see Plainfield Bd. of Ed., D.U.P. No. 2016-004, 42 NJPER 478 (¶132 2016), and also does not appear to be the matter referenced in the first charge.

In the third previous charge, Docket No. CO-2015-060, the Association alleged that Washington was subjected to retaliation for his activities on behalf of the Association, and the Board

---

<sup>2/</sup> The Commission received a copy of that settlement agreement, which was signed by representatives of the Board and the Association, but not by Washington.

retaliated by "rescinding summer employment that was given to Mr. Washington." The Commission was advised on October 5, 2016 by the Association that the matter settled and that the Association withdrew the charge, but the Association did not provide the Commission with a copy or the date of the settlement agreement. Because of the October 5, 2016 notice of settlement and withdrawal in this third charge, and its close proximity in time to Washington's allegation that the prior charge was settled on September 26, 2016, it appears that the prior charge referenced by Washington in the first charge here is Docket No. CO-2015-060.

#### **ANALYSIS**

N.J.S.A. 34:13A-5.3 provides in part:

A majority representative of public employees in an appropriate unit shall be entitled 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 and without regard to employee organization membership.

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

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, discriminatory or in bad faith. [Id. at 190, 64 LRRM 2376.]

New Jersey has adopted the Vaca standard in deciding fair representation cases arising under the Act. See Belen v.

Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); see also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Saginario v. Attorney General, 87 N.J. 480 (1981); OPEIU Local 153 (Johnstone), P.E.R.C. No 84-60, 10 NJPER 12 (¶15007 1983).

Employee organizations such as the Association are entitled to a wide range of reasonableness in determining how to best service their members. See Camden Cty. College, P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987). The Association filed three previous unfair practice charges on Washington's behalf, and the Association and NJEA were entitled to decide how to handle those previous charges, so long as the Association and NJEA did not act discriminatorily, arbitrarily or in bad faith. Although the Association filed the third previous charge, Docket No. CO-2015-060, on Washington's behalf, the Association and NJEA -- not Washington -- were entitled to choose and retain legal counsel, despite Washington's request to replace that counsel. Furthermore, the Association and NJEA were entitled to decide to settle that third previous charge. That the Association and NJEA did not act in accordance with Washington's expectations regarding the handling of the third previous charge does not demonstrate bad faith. See IBEW Local 64, D.U.P. No. 98-37, 24 NJPER 395 (¶29180 1998).



No facts indicate that a different strategy or a different legal counsel for the Association and NJEA would have resulted in Washington's retention of the technology resource teacher position. These uncontested facts do not indicate that the Association or NJEA acted arbitrarily, discriminatorily or in bad faith in their decision to settle the previous charge, to be represented by legal counsel of their choice despite Washington's request for alternate counsel, or to refuse to file unspecified grievances on Washington's behalf after the September, 2016 settlement.

Furthermore, the Commission "does not have jurisdiction over individuals who are no longer public employees, such as individuals who have resigned or retired," Asbury Park, D.U.P. No. 2002-9, 28 NJPER 160 (¶33057 2002), aff'd P.E.R.C. 2002-73, 28 NJPER 253 (¶33096 2002). See also Weisman and CWA 1040, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012); Sarapuchiello and Local 2081, D.U.P. No. 2009-4, 34 NJPER 453 (¶142 2009), aff'd P.E.R.C. 2009-47, 35 NJPER 66 (¶251 2009). Once a charging party ceases to be a public employee within the meaning of the Act, the Commission no longer retains jurisdiction over any subsequent disputes between the former public employee and his or her former public employer and majority representative.

In Asbury Park, supra, the Director refused to issue a complaint on an unfair practice charge filed on June 20, 2001,

more than seven (7) months after the charging party retired from service on December 1, 2000. In reaching this determination, the Director explained that when, "[the charging party] retired, he ceased to enjoy the rights guaranteed to public employees by our Act." Id. at 161. Consequently, the Director concluded, that the charging party lacked standing to pursue the June 20, 2011 unfair practice charge since he no longer was a public employee within the meaning of the Act.

The Commission has also held that individual employees do not have standing to assert a 5.4b(3) violation. Only a public employer has standing to allege such a violation. See Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978); Edison Tp. and Joseph Cies, D.U.P. No. 99-15, 25 NJPER 274 (¶30116 1999); PESU Local 1034 and Renaldo A. King, D.U.P. No. 2004-2, 29 NJPER 367 (¶113 2003); State of New Jersey (Hagedorn) and Knapp, D.U.P. No. 99-17, 25 NJPER 311 (¶30132 1999).

Accordingly, I dismiss the alleged violations of 5.4b(3) also.

Thus, Washington has not alleged any facts indicating that the Association, Jones or NJEA violated 5.4b(1), (3) or (5) of the Act. Accordingly, I conclude that these charges do not meet the Commission's complaint issuance standard and dismiss the charges. N.J.A.C. 19:14-2.2 and 2.3.

**ORDER**

The two unfair practice charges are dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

/s/ Ryan M. Ottavio  
Ryan M. Ottavio  
Director of Unfair Practices

DATED: December 30, 2022  
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 January 12, 2023.**