D.U.P. NO. 2000-6

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

In the Matter of

WOODBINE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-99-61

WOODBINE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses, in part, an unfair practice charge filed by the Woodbine Education Association and Barbara Cissone against the Woodbine Board of Education. The Director found that the majority of the allegations in the charge were filed beyond the Act's six-month statute of limitations and must be dismissed. N.J.S.A. 34:13A-5.4(c). The Director also found that the charging parties lack standing to assert the duty of good faith negotiations on behalf of another employee representative. The Director will issue a Complaint on the allegation that the Board failed or refused to appoint Barbara Cissone to the position of Supervisor of Special Education Services because of animus toward her protected activity.

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Appearances:

For the Respondent,
William J. Yanonis

For the Charging Party,
Waltman, Reilly & Rogovoy, attorneys
(Ned P. Rogovoy, of counsel)

DECISION

On August 26, 1998, the Woodbine Education Association (WEA) and Barbara Cissone filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the Woodbine Board of Education (Board). The Charging Parties allege that the Board violated 5.4a(1) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").[1/] when it refused to negotiate with Cissone and the

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1/ These sections 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; and, (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."

Woodbine Principal's and Supervisor's Association (WPSA), changed Cissone's title, and made certain statements to Cissone.

The Board denies that it committed unfair practices.

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. In correspondence dated July 30, 1999, I advised the parties that I was inclined to issue a complaint on only a portion of the issues raised in the unfair practice charge and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the Complaint issuance standard has not been met with respect to several issues raised in the charge.

The Board and WEA are parties to a series of collective negotiations agreements, the most recent of which is effective from July 1, 1997 through June 30, 2001. The WEA's unit includes all teachers, nurses, school psychologist, learning disability

specialist[2/] and the social worker. Barbara Cissone was a supervising learning disability teacher-consultant employed by the Board.

The Charging Parties allege that on March 24, 1997, Chief School Administrator Roseann Cialella asked Cissone to consent to her removal from the WEA unit. Two days later, on March 26, 1997, the Board announced that Cissone's position was being reduced from twelve to ten months per year. The charge does not state when the reduction took effect; however, we infer that the reduction was implemented by the start of the 1997-1998 school year.

In October 1997, the Board recognized the WPSA as the exclusive majority representative for principals and supervisors. The unit consisted of Supervisor-Learning Disabilities Teacher Consultant (Supervisor-LDTC) Barbara Cissone and Principal Steve Hensil.

The charge alleges that in October 1997, Cialella offered to negotiate for the two PSA unit members with the Board's negotiations committee, but they rejected her offer. By letters dated February 4, 1998; March 2, 1998 and April 21, 1998, to the Board, Cissone and Hensil requested a negotiations meeting. Cissone

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2/ The WEA represents the Board's non-supervisory employees, and the WPSA represents the Board's supervisory employees. As of the filing date of this charge, Cissone was in the WEA, but most of the charge concerns the period when she was in the WPSA. The learning disability specialist title is synonymous with the learning disability teacher consultant (LDTC) referenced below.

and the WEA allege that the Board ignored those requests. The Board alleges that during a meeting on October 6, 1997, it invited the Supervisor's Association to submit written proposals.

On May 7, 1998, Hensil and Cissone attempted to privately present their demands to Board Member Michael Johnson. Cialella interrupted the discussion, and advised Johnson that he did not have authority to negotiate apart from the Board's negotiating committee.

As part of a reorganization sometime in 1997-98, the Board abolished the supervisor-LDTC, and created the 10-month supervisor of special education services. Cissone was not appointed to the supervisor of special education services position, but returned to her previous title, learning disabilities teacher consultant, and returned to the WEA unit effective June 1998.

The charge asserts that: "[Cialella] is now [August 26, 1998] attempting to withhold my increment and prevent me from properly negotiating with the Board of Education for salary and benefits related to my position." No other facts explain specifically how Cialella had prevented Cissone from negotiating over salary and benefits.

The charge concludes that all the above actions: "are antiunionanimous [sic] and discriminatory and in violation of N.J.S.A. 34:13A-5.4a(1) and (3)."

ANALYSIS

Many of the alleged events in this charge occurred more than six months before the filing of this charge and are therefore

beyond the Act's six-month statute of limitations. N.J.S.A. 34:13A-5.4(c) states that:

> "no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.[3/]

The Legislature provided a six-month statute of limitations for unfair practice charges to prevent the litigation of stale claims. The Legislature included only one exception to the statute, which is where a party is prevented from filing a charge. City of Margate, P.E.R.C. No. 94-40, 19 NJPER 572 (¶24270 1993).

The New Jersey Supreme Court described when someone is prevented from filing a charge in Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978):

> The term "prevent" may in ordinary parlance connote that factors beyond the control of the complainant have disabled him from filing a timely complaint. Nevertheless, the fact that the Legislature has in this fashion recognized that there can be circumstances arising out of an individual's personal situation which may impede him in bringing his charge in time bespeaks a broader intent to invite inquiry into all relevant considerations bearing upon fairness of imposing the statute of limitations. Cf. Burnett v. N.Y. Cent. R.R., supra, 380 U.S. at 429, 85 S. Ct. at 1055, 13 L.Ed.2d at 946. The question for

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3/ Cases interpreting this subsection are Piscataway Township Teachers Association, NJEA (Abbamont) D.U.P. No. 90-10, 16 NJPER 162 (¶21066 1990); N.J. Turnpike Employees Union Local 914, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

> decision becomes whether, under the circumstances of this case, the equitable considerations are such that appellant should be regarded as having been "prevented" from filing his charges with PERC in timely fashion. [Id. at 340.]

Here, there is no allegation that Cissone or the WEA was prevented from filing this charge earlier. Therefore, I find that the following allegations are untimely:

> 1. Cialella's alleged March 24, 1997 request that Cissone leave the WEA;
>
> 2. The Board's March 26, 1997 announcement that Cissone's position was being reduced from twelve to ten months per year;
>
> 3. Cissone's workyear reduction, undated but presumably effective in September 1997;
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> 4. Cialella's October 1997 offer to negotiate on behalf of Cissone and Hensil.

These alleged facts were known by the charging parties as soon as they occurred. These allegations are untimely.

The attempt to negotiate with Board Member Johnson

The charge alleges that on May 7, 1998, Hensil and Cissone attempted to present their demands to Board Member Michael Johnson, but that Cialella interrupted the discussion. It appears that the WEA is alleging interference with the WPSA's negotiations. N.J.S.A. 34:13A-5.3 provides that the employer owes a duty to negotiate to the employees' majority representative. Therefore, only the majority representative, not an individual employee or other minority employee organization, has standing to allege that the employer has violated its negotiations obligation. Beall and New Jersey Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284

1980), aff'd NJPER Supp.2d 101 (¶85 App. Div. 1981); State of New Jersey (Kupersmit), D.U.P. No. 91-2, 16 NJPER 421 (¶21177 1990); Rutgers Univ., P.E.R.C. No. 88-130, 14 NJPER 414 (¶19166 1988); City of Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986). Therefore, only the WPSA, not the WEA or Cissone, may assert a claim of failure to negotiate in good faith or interference with those negotiations in violation of a(5) of the Act.

Further, the Board is entitled to structure its conduct of negotiations through a designated committee and to prohibit side-bar discussions with individual members. A majority representative is not entitled to determine or interfere with an employer's negotiations structure. Cialella could not have violated the requirement of good faith negotiations or interfered with the unit members' rights by interrupting Cissone and Hensil's improper attempt to circumvent the Board's designated negotiations committee. Based upon the above, the Charging Party lacks standing to pursue this allegation.

Interference with Cissone's asserted negotiations rights

The charge asserts that: "[The chief school administrator] is now [August 26, 1998] attempting to withhold my increment and prevent me from properly negotiating with the Board of Education for salary and benefits related to my position." No other facts support this conclusory assertion and it is not clear whether Cissone is asserting a right to individual negotiations which are not protected by the Act, or whether Cissone and the WEA believe that the Board

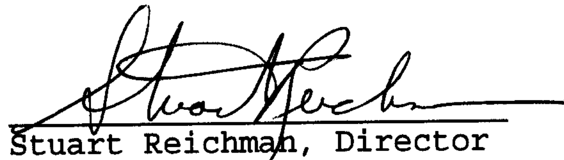
must negotiate with Cissone mid-contract over her terms and conditions of employment as a member of the WEA's unit. For the reasons stated above, Cissone does not have standing to raise this allegation. The Board owed the duty of good faith negotiations over Cissone's terms and conditions of employment when she was a supervisor to her majority representative, the WPSA, and not to her individually or to the WEA. I note that the recognition clause of the WEA's current agreement includes the learning disabilities specialist, the title synonymous with Cisson'e current title. Thus, it appears that Cissone's current terms and conditions of employment have already been negotiated and incorporated into the existing agreement. Therefore, this allegation is dismissed for its lack of specificity, for lack of standing, and for failing to state facts which, even if true, would constitute unfair practices. A violation of section 5.4a(5) of the Act was not plead in the charge.

The remaining allegation -- that Cissone was not appointed to the Supervisor of Special Education Services -- effective June 1998, because of animus toward her protected activity -- appears to be timely and actionable under our Act. Bridgewater Tp., 95 N.J. 235 (1984).

Accordingly, I find that the Commission's complaint issuance standard has not been met. The unfair practice charge is dismissed, except for one allegation: the Board's alleged failure to appoint Cissone to the Supervisor of Special Education Services in

June 1998. I will issue a Complaint and Notice of Hearing as to that allegation.[4/]

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: August 19, 1999
Trenton, New Jersey

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