

D.U.P. NO. 90-10

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

In the Matter of

PISCATAWAY TOWNSHIP TEACHERS'
ASSOCIATION, NJEA,

Respondent,

-and-

Docket No. CI-89-93

JOSEPH P. ABBAMONT,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the Piscataway Township Teachers' Association violated the duty of fair representation by failing to provide "legal assistance" to the charging party during discharge and other employment hearings.

The Director determined that much of the charge was untimely filed and that the Association's failure to provide legal counsel was not, in this case, a sufficient basis upon which to issue a complaint.

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Appearances:

For the Respondent,
Donna Campbell, President

For the Charging Party,
Joseph Abbamont

REFUSAL TO ISSUE COMPLAINT

On June 26, 1989, Joseph Abbamont, Jr. filed an unfair practice charge alleging that the Piscataway Township Teachers' Association, NJEA ("PTEA") unlawfully refused to provide him legal assistance during his termination and other hearings. On July 11, we advised Abbamont that his charge was untimely filed, pursuant to N.J.S.A. 34:13A-5.4(c) but we afforded him an opportunity to supply us with more facts. On July 17, he filed an amendment asserting that he was prevented from filing a charge until June 23, 1989. He referred to his June 26 charge and included a copy of a March 28, 1989 letter from an attorney in a New Jersey law firm who ostensibly represents the PTEA. The attorney referred to an "April 1988

termination letter", a July 1988 unemployment compensation hearing and a January 1989 Board Appeal Hearing. The attorney's letter also stated that at the January 1989 hearing, Abbamont was accompanied by a PTEA representative.

On July 19, we advised Abbamont in writing that he had not explained in "clear and concise facts how [he] was prevented from filing" a timely charge. On July 26, he filed a letter stating that a staff attorney told him that he could "file anytime within six months" and that he had timely filed his charge.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{1/} The Commission has delegated its authority to issue complaints to me and has 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 allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{2/}

1/ N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

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

The Commission's rules provide that I may decline to issue a complaint.^{3/}

In determining whether a complaint may issue, we must apply the statutory timeliness requirement. N.J.S.A. 34:13A-5.4(c) provides:

...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.

We may not issue a complaint when a charging party fails to allege that the unfair practice(s) occurred within the six-month limitation period. No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977); N.J. Turnpike Employees Union Local 914, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

We are satisfied that Abbamont was accurately informed of N.J.S.A. 34:13A-5.4(c), requiring that unfair practice charges be filed within six months of the occurrence of any unfair practice. We advised him of the limitations period in our July 11 letter and again in our July 19 letter which requested more facts about how he was "prevented" from filing a timely charge. We also believe that the staff attorney accurately apprised Abbamont of the need to file a timely charge.

^{3/} N.J.A.C. 19:14-2.3.

The alleged unfair practice concerns the PTEA's refusal to represent Abbamont in discharge and other employment proceedings. It appears that Abbamont was informed of his discharge in or around April 1988. This fact is corroborated by the attorney's letter which Abbamont included in his amended charge. Abbamont also included a December 5, 1988 PTEA letter informing him that it has "no basis for taking further action" on his behalf. We believe that the six month period began when Abbamont received this letter. Accordingly, I find that all portions of the charge predating January 1989 are untimely filed.^{4/}

Assuming that the portion of the charge alleging a failure to provide legal assistant in January 1989 is timely, I do not believe that the complaint issuance standard has been met. The substance of the allegation is that the Association's failure to provide legal assistance at the appeal hearing violates the duty of fair representation.

Unions must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. A breach of the duty of fair representation occurs only when a union's conduct toward a unit member is "arbitrary, discriminatory, or in bad faith." Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171

^{4/} Abbamont alleged no facts suggesting that the Piscataway Board of Education engaged in any unfair practice. Those charges are dismissed.

(1967). The Commission and New Jersey Courts have consistently applied the Vaca standard in evaluating fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981); Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Loc. 153 (Thomas Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). The mere fact that a union decision results in a detriment to one unit member does not establish a breach of the duty. Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); see also Humphrey v. Moore, 375 U.S. 335 (1964).

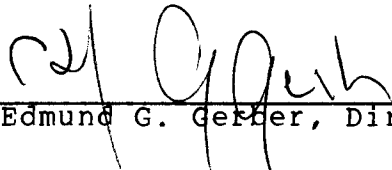
In Bergen Community College Faculty Association, P.E.R.C. No. 84-117, 10 NJPER 262 (¶15127 1984), the Commission adopted a hearing examiner's grant of summary judgment in favor of a union charged with withdrawing legal assistance from a unit employee pursuing a lawsuit in federal court. The Commission concluded that the issue of providing legal assistance to unit employees was an internal organizational matter and one not generally within the Commission's jurisdiction. See also Camden County College, D.U.P. No. 89-11, 15 NJPER 171 (¶20072 1989). (refusal of a union to provide legal assistance to a unit member for a Commission hearing).

Abbamont has not provided any facts supporting the allegation that Association members in similar or identical circumstances have been provided an attorney or that Association has taken other actions against agency fee payers. The sum of the allegations does not satisfy complaint issuance standards.

Moreover, the Act's conferral of unfair practice jurisdiction does not empower the Commission to resolve intra-union disputes. Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260) 1982) Failure to provide counsel or payment for legal fees, absent other factors, is an internal union matter, not an unfair practice. Bergen Comm Coll., Camden Co. Coll., P.B.A. Local 105 (Giordano), D.U.P. No. 90-1, 15 NJPER 457 (¶20186 1989).

Accordingly, the Commission's complaint standard has not been met and I decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 25, 1990
Trenton, New Jersey