

H.E. NO. 2002-8

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK TEACHERS UNION,

Respondent,

-and-

Docket No. CI-H-2000-10

ETHEL BLAKE SYKES,

Charging Party.

Appearances:

For the Respondent, Szaferman, Lakind, Blumstein, Watter & Bladder, attorneys
(Stuart Tucker, of counsel)

For the Charging Party, Ethel Blake-Sykes, pro se

DECISION ON MOTION FOR SUMMARY JUDGMENT

On October 1, 1999 and July 25, 2000, Ethel Blake Sykes (Sykes or Charging Party) filed an unfair practice charge and amended charge against the Newark Teachers Union (NTU) alleging violations of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4b(1) and (2).^{1/} She contends the NTU failed to respond to a September 14, 1999 fax and certified mailed written request for a meeting with NTU

^{1/} These provisions 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances."

representatives to discuss certain grievances. She further contends she was advised the NTU acknowledged receiving her request for a meeting, that it was referred to the NTU president and that he would "take care if it." She alleges that she was not aware she could file her own grievance without the NTU's assistance.^{2/}

The NTU denies it ignored Sykes' request for a meeting. It contends that after it received the faxed request for a meeting, its representatives placed several telephone calls to her and left messages but Sykes failed to respond.

On September 27, 2000, a complaint and notice of hearing issued and the matter was scheduled for a pre-hearing conference and hearing; both parties subsequently requested numerous adjournments of these proceedings.^{3/}

2/ She also contended the NTU discriminated against her due to her status as an agency fee payer. That claim, however, was subsequently withdrawn.

3/ A prehearing conference and hearing were scheduled for November 2 and 9, 2000 respectively; both were adjourned at NTU's request. Proceedings were rescheduled for January 18 and 25, 2001, respectively. The January 25, 2001 hearing date was adjourned at Respondent's request and rescheduled for April 12, 2001. That hearing date was adjourned at Charging Party's request and rescheduled for July 10, 2001. Charging Party, contending she was a 10-month employee and was not available for a July hearing requested that date be adjourned. The matter was rescheduled to September 12, 2001 and Charging Party was advised no further adjournments would be granted absent extremely emergent circumstances and that failure to appear on the scheduled date may result in dismissal of the charge. In light of the tragic events in New York, Pennsylvania and Washington, D.C. on September 11, 2001, the parties jointly requested the September 12th hearing be postponed; it was rescheduled for October 30, 2001. That hearing date was also cancelled at Charging Party's request.

During the January 18, 2001 pre-hearing conference, Charging Party withdrew her claim that the NTU discriminated against her due to her status as an agency fee payer. The NTU, having failed to answer the complaint, filed a motion to file a late answer.^{4/} The January 25th hearing was adjourned at Respondent's request because one of its representatives was not available to discuss possible settlement. Respondent then moved for "summary disposition pursuant to R10:11-6.9." As it was not clear what procedural mechanism Respondent sought to invoke and the motion did not otherwise comport with regulations governing motions in unfair practice proceedings, it was denied.

On August 17, 2001, NTU filed a motion seeking summary judgment contending the complaint should be dismissed because the underlying grievances Charging Party sought to meet and discuss with the NTU in September 1999 were untimely pursuant to the collective bargaining agreement. Therefore, it reasons that even if it failed to respond to her request for a meeting it could not have violated the Act because had NTU attempted to process her grievances they would have been dismissed as untimely.

The motion was referred to me for disposition. N.J.A.C. 19:14-1.8. NTU's request for oral argument was initially granted and scheduled to immediately precede the opening of the hearing. Given the number of adjournments in this proceeding, however,

^{4/} The motion was granted, together with several other procedural matters, on May 3, 2001.

including the most recently scheduled October 30, 2001 hearing date, Respondent withdrew its request for oral argument and I advised the parties they would have an opportunity to supplement their written positions before I issued my decision. The parties supplemental positions were due by November 16, 2001. Based on all the submissions filed to date, I grant in part, and deny in part, NTU's motion for the following reasons.

FINDINGS OF FACT^{5/}

1. Charging Party is a teacher employed in the Newark School District (District). The District is a public employer within the meaning of the Act.

NTU represents the District's teaching and support staff; it is Charging Party's majority representative. Charging Party is not an NTU member, she is an agency fee payer. She is also a negotiator for the Newark School Nurses who are represented by a different majority representative.

2. NTU and the District are parties to a collective negotiations agreement effective July 1, 1997 through June 30, 2000. It contains a grievance procedure for the resolution of disputes concerning terms and conditions of employment contained within the agreement. It requires grievances be initiated within

^{5/} The following facts are gleaned from the pleadings, together with the briefs, affidavits and other documents filed in this matter and are set-forth here in the light most favorable to Charging Party.

thirty school days following the employee becoming aware of the act or circumstances giving rise to the grievance. Failure to initiate a grievance within that time constitutes a waiver. The grievance procedure consists of four steps ending in binding arbitration. Each step, including the request for binding arbitration, may be initiated and processed by the employee or the NTU.

3. During the Fall of 1998, Charging Party filed a complaint in the Superior Court of New Jersey, Law Division, Special Civil Part, Essex Vicinage, Docket No. R-18548-1998 against the District alleging it improperly withheld money from her salary during a seven-day period from September 10, 1998 to September 17, 1998. She amended the complaint in January 1999 alleging the District "arbitrarily deprived [her] of six weeks pay..." She did not specify whether the six weeks were inclusive of the seven days originally plead.

On September 1, 1999, the complaint and amended complaint were dismissed for lack of subject matter jurisdiction; Charging Party failed to exhaust her administrative remedies before filing in Superior Court.

4. On or about September 14, 1999, Charging Party faxed, and sent by certified mail, a letter to NTU President Joseph DelGrosso requesting an appointment to discuss two grievances she wanted to file against the District. One grievance related to the payment of monies the District allegedly withheld from her during the 1997-1998 and 1998-1999 school years (salary grievance). The

other grievance related to alleged racial discrimination by a school principal who transferred Sykes' students to another teacher (student transfer grievance). The NTU acknowledged receiving her request for a meeting, that it was referred to the NTU president and that he would "take care of it."

5. The parties dispute whether the NTU responded to Sykes' written requests for a meeting.

6. The parties dispute whether Sykes was aware that she could file her own grievance without the NTU's assistance.

ANALYSIS

Charging Party contends NTU violated its duty of fair representation by failing to respond to her request for a meeting to discuss her two grievances. NTU contends that the complaint should be dismissed because the underlying grievances were untimely pursuant to the collective negotiations agreement.

Summary judgment will be granted "[i]f it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law..." N.J.A.C. 19:14-4.8(d). Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995), specifies the standard to be used to determine whether there exists a genuine issue of material fact which precludes summary judgment. To find that a genuine issue of material fact exists, a hearing examiner must

consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill at 540. Thus, if a disputed issue can only be resolved in one way, then it is not a "genuine issue" of material fact which would preclude summary judgment. "When the evidence 'is so one-sided that one party must prevail as a matter of law,' then the motion should be granted." Brill at 540. Citing Andersen v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L.Ed. 2d 202, 213 (1986). A motion for summary judgment should be granted with caution and may not be used as a substitute for a plenary hearing. See Baer v. Sorbello, 17 N.J. Super. (App. Div. 1981); Essex Cty. Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); N.J. Dept. of Human Services, P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988).

With the foregoing standards in mind, I find there are sufficient disputed facts in this case to preclude summary judgment as to Sykes' b(1) claim.

Charging Party sought to meet and discuss two grievances with NTU representatives in September 1999. The first, the salary grievance, related to Sykes' dispute with the District regarding payment of salary allegedly withheld during the 1997-1998 and 1998-1999 school years. As to the second, the student transfer grievance, there is insufficient evidence, at this stage of the proceeding, to determine when the operative events gave rise to that matter.

NTU's motion suggests this case is solely about the fact that Sykes' written request for a meeting with NTU representatives to discuss both grievances was submitted after the time period for filing the grievance(s) expired. If this were all the case were about, summary judgment may be appropriate. See generally, Jersey City Medical Center, P.E.R.C. No. 87-19, 12 NJPE 740 741 (¶17277 1986), citing New Jersey Sports and Exposition Authority, P.E.R.C. No. 84-66, 10 NJPER 23 (¶15013 1983).

The issue in this case, however, is not whether the underlying grievances had substantive or procedural merit, but whether NTU owed Sykes a response to her request for a meeting. The facts of this case suggest there is a dispute regarding what, if anything, NTU did following its receipt of Sykes' September 1999 fax and certified letter. Sykes contends NTU acknowledged receiving her request for a meeting, that it was referred to the NTU president and that Sykes was advised the NTU president would "take care of it" but that the NTU failed to further respond. NTU disputes those facts, thus a plenary hearing is necessary.

Additionally, the parties dispute whether Sykes was aware she could file her own grievance without the NTU's assistance.^{6/}

Although not specifically raised in Respondent's motion, I note that Charging Party asserts a violation of 5.4b(2). That

^{6/} It is not clear to me, at this time, that Charging Party's actual or constructive knowledge of a self-executing grievance procedure defeats her claim, if supported by a preponderance of the evidence, that NTU failed to respond to her request for a meeting.

provision prohibits a majority representative from "[i]nterfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances." This right flows to the public employer rather than to individual unit members. Sykes therefore has no standing to allege violations of this provision of the Act. See Township of Edison (Cies), D.U.P. No. 99-15, 25 NJPER 274 (¶30116 1999).

For the foregoing reasons, Respondent's motion for summary judgment is granted in part and denied in part.

As to the 5.4b(2) claim, the motion is granted.

As to the 5.4b(1) claim, I find there exist genuine issues of material fact in dispute, therefore, the motion is denied.^{7/}

Kevin M. St.Onge
Hearing Examiner

Dated: December 3, 2001
Trenton, New Jersey

^{7/} Regarding the salary grievance, there is no dispute that at the time Sykes submitted her written request to meet with NTU representatives in September 1999 to discuss the merits of that grievance, the time to initiate such a grievance had expired. Moreover, there are no allegations NTU was otherwise aware of the events giving rise to that potential grievance and it was not a party to Sykes' related Superior Court claim. Accordingly, it seems to me that the NTU had no duty to Sykes to file that grievance and can not be held responsible for the time bar to that claim. To the extent Sykes seeks monetary damages in this case from NTU, it cannot be based on the failure to file the salary grievance as it was time barred by the time NTU was made aware of it. Whether the student transfer grievance is similarly time-barred is a factual matter for hearing.