

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PENNSAUKEN BOARD OF EDUCATION,
Respondent,

-and-

AFSCME COUNCIL 71, LOCAL 2300,
Respondent,

Docket No. CI-2009-019

-and-

LESTER F. CREAM, SR.,
Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices' refusal to issue a complaint based on an unfair practice charge filed by Lester Cream against the Pennsauken Board of Education and AFSCME Council 71, Local 2300. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., because Cream is one of nine elementary daytime custodians who perform the same duties, but only Cream is on a different custodian salary guide. The charge alleges that AFSCME violated the Act because it would not arbitrate Cream's grievance challenging his compensation. The Director found that Cream had not alleged any facts indicating that the Board violated 5.4(a)(1), (3), (4), or (7) of the Act and that an individual employee does not have standing to assert violations of 5.4a(2), (5) or (6) because the employer's duty under those provisions runs only to the majority representative. As for the allegations against AFSCME, the Director found that the unfair practice charge did not allege any facts indicating that AFSCME's decision not to arbitrate Cream's grievance was arbitrary, discriminatory or made in bad faith.

Cream argued on appeal that AFSCME's decision was arbitrary, discriminatory or in bad faith and the Board's actions were in retaliation for other discrimination complaints he filed alleging age and race discrimination. The Commission holds that none of the documents supplied on appeal allege any facts to suggest that AFSCME breached its duty of fair representation in the six months prior to the filing of the charge on November 8, 2008. Nor do the documents allege that the Board violated its obligations under the Act in the six months prior to the filing of the charge. Even if the Board had discriminated on the basis of age and race, such discrimination would not constitute a violation of the Act.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2009-63

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Appearances:

For the Respondent - Board, Quinlan, Dunne & McConnell,
LLC, attorneys (Karl N. McConnell, of counsel)

For the Respondent - AFSCME, John Hemmy, Associate
Director

For the Charging Party, Lester F. Cream, Sr., pro se

DECISION

Lester F. Cream Sr. has appealed a decision of the Director of Unfair Practices. That decision refused to issue a complaint based on an unfair practice charge Cream filed on November 18, 2008 against the Pennsauken Board of Education and AFSCME Council 71, Local 2300. D.U.P. No. 2009-7, __ NJPER __ (¶__ 2009). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically

5.4a(1) through (7),^{1/} because Cream is one of nine elementary school daytime custodians who perform the same duties, but only Cream is on a different custodian salary guide. The charge also alleges that AFSCME violated the Act, specifically 5.4b(1)

1/ These provisions 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. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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 of employees in that unit, or refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

through (5),^{2/} because it would not arbitrate Cream's grievance challenging his compensation.

The Director found that Cream had not alleged any facts indicating that the Board violated 5.4(a)(1), (3), (4), or (7) of the Act and that an individual employee does not have standing to assert violations of 5.4a(2), (5) or (6) because the employer's duty under those provisions runs only to the majority representative. As for the allegations against AFSCME, a breach of a union's statutory duty of fair representation occurs only when a union's conduct is arbitrary, discriminatory or in bad faith. The Director found that the unfair practice charge did not allege any facts indicating that AFSCME's decision not to arbitrate Cream's grievance was arbitrary, discriminatory or made in bad faith.

Cream states that he is appealing on the grounds that AFSCME's decision was arbitrary, discriminatory or in bad faith.

^{2/} 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. (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. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

He further states that as far back as 2001, AFSCME "signed a document against their negotiated agreement." As for the Board, he states that the Board's actions "were in retaliation as far back as 2001" and he has attached a copy of a charge he filed with the New Jersey Division on Civil Rights and Equal Employment Opportunities Commission alleging age and race discrimination.

Unfair practices must be filed within six months of the alleged unfair practice. N.J.S.A. 34:13A-5.4c. None of the documents supplied to the Director or on appeal allege any facts to suggest that AFSCME breached its duty of fair representation in the six months prior to the filing of the charge on November 8, 2008. Nor do the documents allege that the Board violated its obligations under the Act in the six months prior to the filing of the charge. Even if the Board had discriminated on the basis of age and race, such discrimination would not constitute a violation of the Act. Accordingly, we sustain the decision not to issue a complaint.

ORDER

The refusal to issue a complaint is sustained.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioner Watkins was not present.

ISSUED: May 28, 2009

Trenton, New Jersey