

D.U.P. NO. 87-16

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

In the Matter of

NEW JERSEY EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-87-53

JEAN BROWN & EVELYN GANTT,

Charging Party.

SYNOPSIS

The Director refuses to issue a complaint on an unfair practice charge filed by two paraprofessional teaching aides who allege that the NJEA and the East Orange Board of Education negotiated in bad faith by agreeing to a new, lower salary guide concerning paraprofessionals without high school diplomas. The individuals lacked standing to challenge the Board's conduct in collective negotiations and they failed to allege that the Association acted arbitrarily, discriminatorily or in bad faith.

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Appearances:

For the Respondent,
Ruhlman, Butrym and Friedman, Esqs.
(Richard A. Friedman, of counsel)

For the Charging Party,
Jean Brown and Evelyn Gantt, pro se

REFUSAL TO ISSUE COMPLAINT

On February 11, 1987, Jean Brown and Evelyn Gantt filed an Unfair Practice Charge alleging that the New Jersey Education Association ("NJEA") and the East Orange Board of Education ("Board") committed an unfair practice by their conduct during contract negotiations for a successor agreement. Gantt and Brown allege that the NJEA and Board failed to respect and protect their seniority rights by agreeing to a separate and lower salary guide for paraprofessional aides without high school diplomas. Brown and Gantt allege that the Board and the NJEA, being fully aware of their ages and years of service and should have negotiated a grandfather clause limiting the application of the new salary guide to employees hired after them.

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

It appears that the Commission's complaint issuance standards have not been met. Gantt and Brown lack standing to bring a charge against the Board based on its behavior during negotiations with their majority representative. The Board is obligated to

^{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.

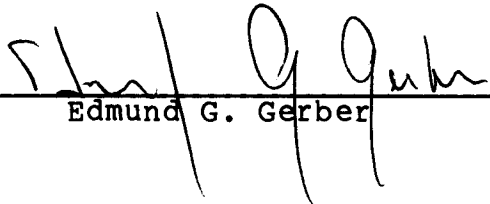
^{3/} N.J.A.C. 19:14-2.3.

negotiate in good faith with the majority representative only and the Charging Parties cannot stand in the shoes of the majority representative. City of Jersey City and P.O.B.A., P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986). Therefore, the allegations concerning the Board must be dismissed.

In order to maintain a claim that a majority representative has breached its duty of fair representation, facts must be alleged, which, if true, would support the claim that it acted in a manner which was arbitrary, discriminatory or in bad faith. City of Jersey City, supra; Lawrence Tp. P.B.A. Local 119, P.E.R.C. No. 84-71, 10 NJPER 41 (¶15023 1983); Vaca v. Sipes, 386 U.S. 171 (1967). Here, Gantt and Brown allege simply that their representative failed to obtain for them in negotiations treatment different than that accorded to other paraprofessional aides without high school diplomas. The Commission recognizes that in the give and take of collective negotiations, certain employees will fare better than others. A majority representative does not breach its duty to fairly represent its members at the negotiations table simply because the benefits achieved are not identical for all employees; it must be alleged that the majority representative acted arbitrarily, discriminatorily or in bad faith. In the absence of specific allegations of such conduct, no complaint shall issue.

Accordingly, I decline to issue a complaint and dismiss this matter in its entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber

DATED: May 7, 1987
Trenton, New Jersey