

L.D. NO. 94-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-93-26

NEWARK TEACHERS' ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Robin T. McMahon, Associate Counsel

For the Charging Party
Balk, Oxfeld, Mandell & Cohen, attorneys
(Nancy I. Oxfeld, of counsel)

DECISION

On July, 17, 1992, the Newark Teachers Association filed an unfair practice charge against the Newark Board of Education alleging that the Board violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4(a)(1) and (5), ^{1/} when it sent Ethyl Sykes a letter of reprimand for her alleged conduct during a staff meeting and further, sent a copy of the letter of reprimand to the Newark Teachers Union.

^{1/} These subsections 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. (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."

In an effort to resolve this matter, the parties agreed to utilize the Commission's Litigation Alternative Program (LAP). On June 24, 1993, I conducted a LAP hearing at which time the parties examined and cross-examined witnesses, presented evidence and argued orally. The parties waived the right to file briefs.

Ethyl Sykes has been a teacher at the McKinley School for over seven years and is President of the Newark Teachers Association. The Association is the exclusive majority representative of all Head Cooks and Newark Public School Nurses employed by the Board.

Sykes received the following disciplinary memo for comments she allegedly made during a meeting between teachers and the school superintendent.

On Friday, February 28, 1992 at a meeting with Mr. Campbell, Mr. Morano, Mrs. Nelms, staff members, and parents, you made the following statement in the presence of all in attendance. "Miss Serra is lying and is getting ready to tell more lies and I won't listen."

At that point you picked up your things and left the meeting.

In my opinion, your outburst was uncalled for and totally unprofessional.

The Association claims Sykes never called Serra a liar. Moreover, Sykes' remarks were made as an employee representative. Therefore, she was engaged in protected activity, so the discipline was violative of the Act.

The Board claims that Sykes was not engaged in protected activity and was disciplined because of her unprofessional activity.

The Principal of the school, Rose Serra, testified at the hearing on behalf of the Board. She had certain concerns which involved the parents of students at the school. Parents are allowed to bring their children into the school building and some parents apparently stay in the building to assist the teachers when students first come into the classroom. However, all parents must either leave the building by 9 a.m. or else get a pass from the school office. One particular parent, Joann Miller would stay past nine but would not get a pass.^{2/}

Sykes testified that she believed this policy was not being fairly applied. She believed that another parent was allowed to remain in the building past nine without a pass.

The Superintendent of Schools, Eugene Campbell, had contacted Serra and asked that she set up a voluntary meeting with the staff and local community. According to Serra, these issues had been brought to his attention and he wanted to "bring them to closure." The meeting took place on February 28, 1993. It was well attended by both parents and faculty. Superintendent Campbell was in attendance along with Assistant Superintendent Morano and Morano's assistant, Nelms.

^{2/} Miller was also involved in controversy concerning the school's Parent Teacher Association. She claims she was formerly president of the PTA, although that was in dispute. Miller was also apparently in possession of PTA dues that were neither refunded to PTA members nor forwarded to the State Department of Education.

At the meeting, Campbell asked what was the school policy concerning parents in the school building past nine o'clock. Serra responded that at nine the school guard checks every classroom to ensure that every parent has left the building.

Sykes testified that at that point she stated out loud "Mrs. Serra I believe you do not even tell the truth" and picked up her coat and walked out of the meeting. However, Sykes was a very excitable witness. On cross-examination she was suspicious and prone to argument.

Joann Miller testified on behalf of the Association. She was at the meeting and heard Sykes state "Mrs. Serra you don't even tell the truth." Her testimony corroborates Sykes'. However, Miller is not a neutral witness. Her conduct was the subject of the meeting. Miller has also filed complaints against Campbell, Nelms, Serra, a number of other school officials, a school aide and a clerk.

The Association's final witness was Jule Thomas, a teacher aide. Thomas also testified that Sykes stated "I don't believe you're telling the truth." Thomas was a credible witness and there is no reason to doubt her testimony.

The Board's witnesses included Serra, Joan Zimmerman, Judy Fishman and Gladys Bond. All testified that Sykes stated that "Miss Serra is lying; I'm tired of her lying" (or "I'm tired of hearing her lies") gathered her coat and left. They testified that no one from either unit represented by Sykes was present at the meeting. Zimmerman testified that Miller left with Sykes. I found all four of the Board witnesses forthright and credible.

Sykes demeanor as a witness, was consistent with the conduct Serra accused her of. Further, Miller was not a dispassionate and objective witness. On balance, I find by a preponderance of evidence, that Sykes did call Serra a liar in an open public meeting.

Moreover, I find that under the circumstances, Sykes' conduct was not protected by the Act. Her position in the Association was known to Serra but her organization does not represent the employees who attended the meeting, nor were they impacted by this meeting.

In City of East Orange, P.E.R.C. No. 84-70, 10 NJPER 28 (¶1507 1983), the Commission found that an employee's outbursts and disruptive conduct during a general staff meeting did not constitute protected activity on the part of the employee. The Commission stated:

On the one hand is the employer's right to maintain discipline in his establishment. It is beyond cavil that insubordination and disruption of staff meetings are actions which an employer need not tolerate. On the other hand is the employee's right to engage in activities protected by this Act, assuredly including the right to present grievances to her employer.
[Id.]

The Commission then went on to state that "...in the processing and resolution of grievances the parties must be on an equal footing and not in a master and servant relation." City of Asbury Park, P.E.R.C. No. 80-24, 5 NJPER 389, 390 (¶10199 1979). However, in E. Orange, the Commission held that the Charging Party's

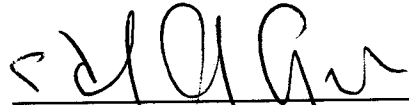
...outburst did not occur during a grievance meeting; [she] was not acting as a spokesperson for the majority representative seeking to represent or defend employees during an investigation of suspected employee misconduct; and her behavior went beyond the bounds of propriety....We do not believe that, under these circumstances, an individual employee has a protected right to unilaterally convert a meeting called by the employer for the purpose of commenting upon its impressions of faulty work performance into a grievance conference where the parties are on an equal footing. [City of E. Orange, 10 NJPER at 30. Footnote and citation omitted.]

Also, in Atlantic Cty. Judiciary, P.E.R.C.. No. 93-52, 18 NJPER 55 (¶24025 1993), the Commission found that an employee's statement in a staff meeting that he did not trust the supervisor conducting the meeting was not protected conduct (the supervisor suggested that they meet privately after the meeting to address a particular issue).

So to here. Sykes' comment was unnecessary, demeaning and failed to show the respect expected of one employee to another, never mind the respect owed by an employee to her supervisor. Given the time, place, subject matter and the people present at the meeting, I find Sykes' conduct was unprotected and I will not recommend that the reprimand be lifted.

Finally, I find that Serra's notification of the discipline to the NTU to be proper. The NTU is Sykes' majority representative and has a duty to represent Sykes. This obligation does not cease because Sykes is president of a rival organization and chose not to have the NTU represent her. I can find no illegal motive in Serra's action.

Accordingly, I find for the Newark Board of Education.



Edmund G. Gerber
Commission Designee

DATED: July 2, 1993
Trenton, New Jersey