

D.U.P. NO. 2012-10

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

In the Matter of

TOTOWA EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CE-2012-001

TOTOWA BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Totowa Board of Education against the Totowa Education Association. The charge, as amended, alleges that the Association violated 5.4b(1), (2), and (5) of the Act when it "defamed and disparaged" the Superintendent at an Association meeting conducted in a restaurant open to the general public by describing him as a "bully" and "no friend of the Association." The charge also alleges that the Association has "consistently failed to follow the grievance procedure" set forth in the parties' collective negotiations agreement which has "prevented the Superintendent and the Board from properly adjudicating grievances."

The Director noted that our Commission does not have jurisdiction over defamation claims. Newark Firemans Union, Inc., Local 1846 and Fire Fighters Association of New Jersey (Bishop, Johnson, et al.), P.E.R.C. No. 96-43, 22 NJPER 29 (¶27014 1995). With regard to the allegation that the Association "consistently failed to follow the grievance procedure" set forth in the parties' collective negotiations agreement, the Director concluded that the allegation was not pled with the specificity required by N.J.A.C. 19:14-1.3(a)(3). The Director further determined that even if the charge were amended to provide the specificity required by the rule, an allegation that a public employer is harmed by a majority representative's failure to file a grievance in accordance with the parties' negotiated procedure would likely be dismissed.

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Appearances:

For the Respondent  
Oxford Cohen, P.C.  
(Sanford R. Oxford, of counsel)

For the Charging Party  
Lindabury, McCormick, Estabrook & Cooper, P.C.  
(Anthony P. Sciarrillo, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On July 21, 2011 and December 7, 2011, the Totowa Board of Education (Board) filed an unfair practice charge and amended charge against the Totowa Education Association (Association). The charge, as amended, alleges that on February 23, 2011, the Association violated 5.4b(1), (2), and (5)<sup>1/</sup> of the New Jersey

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<sup>1/</sup> 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; and (5) Violating any of the  
(continued...)

Employer-Employee Relations Act (Act) when it “. . . defamed and disparaged” the Superintendent at an Association meeting conducted in a restaurant open to the general public. The charge also alleges that the Association has “. . . consistently failed to follow the grievance procedure” set forth in the parties’ collective negotiations agreement which has “. . . prevented the Superintendent and the Board from properly adjudicating grievances.”<sup>2/</sup>

The Association asserts that none of the alleged actions violate the Act.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute unfair practices on the part of the Respondent. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I will decline to issue a complaint. N.J.A.C. 19:14-2.3. I find the following facts.

On February 23, 2011, an Association meeting was conducted in a restaurant dining room open to the public. During the

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<sup>1/</sup> (...continued)  
rules and regulations established by the commission.

<sup>2/</sup> The charge also alleges that actions of the previous Association co-presidents “interfered with their members’ right to fair representation.” A public employer does not have standing to allege a breach of a duty of fair representation, which is owed only to unit employees. Accordingly, I dismiss this allegation.

meeting, customers [non-unit employees] entered the room, sat, ate and departed at will. Association members discussed various actions taken by Board Superintendent, Dr. Vincent Varcadipane, and openly expressed their opinions. Varcadipane was identified as a "bully" during the meeting, and was described as "no friend of the Association."

#### ANALYSIS

Our Commission does not have jurisdiction over defamation claims. Newark Firemans Union, Inc., Local 1846 and Fire Fighters Association of New Jersey (Bishop, Johnson, et al), P.E.R.C. No. 96-43, 22 NJPER 29 (¶27014 1995). The Commission wrote in Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981): "A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, which includes the effective delivery of government services, just as the employee representative has the right to criticize those actions of the employer which are inconsistent with that goal (emphasis added)." Cf., Pietrunti v. Brick Township Bd. of Ed., 128 N.J. Super. 149 (App. Div. 1974), certif. den. 65 N.J. 573 (1974). The Board has not alleged any facts indicating that remarks of Association members at the February 23, 2011 meeting were unprotected or that they interfered with, restrained or coerced employees in the exercise

of the rights guaranteed to them by this act. I dismiss the 5.4b(1) allegation.

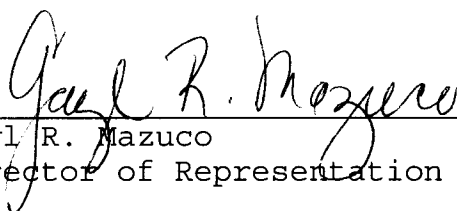
N.J.A.C. 19:14-1.3(a)(3) requires that a charge set forth:

A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

That the Association allegedly and "consistently failed to follow the grievance procedure" set forth in the parties' collective negotiations agreement does not meet this administrative requirement. The Board has not alleged any dates on which the Association failed to follow the grievance procedure, nor has it provided any facts specifying how it failed to follow that procedure. Even if the charge was amended to provide the specificity required by the rule, I would likely dismiss an allegation that a Majority representative's failure to file a grievance in accordance with the parties' negotiated procedure harms the public employer.

The Board alleges no facts suggesting that the Association interfered with, restrained or coerced it in its selection of its representative for the purposes of negotiations or the adjustment of grievances. Nor does the Board cite a Commission rule or regulation which the Association violated. I dismiss the 5.4b(2) and 5.4b(5) allegations.

The charge is dismissed.

  
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Gayl R. Mazuco  
Director of Representation

DATED: December 30, 2011  
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to  
N.J.A.C. 19:14-2.3.**

**Any appeal is due by January 11, 2012.**