

D.U.P. NO. 2023-27

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

In the Matter of

PATERSON EDUCATION ASSOCIATION,  
PATERSON PUBLIC SCHOOLS,

Respondents,

-and-

Docket Nos. CI-2019-028  
CI-2021-007

NEW JERSEY EDUCATION  
ASSOCIATION,

Respondent,

-and-

MARCELLA SIMADIRIS,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses two unfair practice charges filed by Marcella Simadiris (Simadiris). In the first charge, Simadiris alleges that the Paterson Education Association (Association), her majority representative, and the Paterson Public School District (District) committed numerous unfair practices that violated section 5.4a(1), (2), (3), (4), (5), and (7), and also section 5.4b(1), (2), (3), and (5) of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq. The Director dismisses the charge against the Association and the District because Simadiris lacks standing to pursue certain claims, several of the alleged actions occurred outside the six-month limitations period, and the remaining claims are conclusory and lack the required specificity to justify the issuance of a complaint.

In the second charge, Simadiris alleges that the New Jersey Education Association (NJEA) violated the duty of fair representation by ignoring her request for an internal union investigation and providing inadequate legal counsel. Simadiris alleges that the NJEA's actions violated sections 5.4a(1), (3), (4), and (7), and section 5.4b(1), (2), and (5) of the Act. The Director dismisses the charge against the NJEA because section 5.4a of the Act does not apply to labor organizations, individual employees lack standing to pursue section 5.4b(2) claims, the charge contains no allegations that any rule or regulation of the Commission was violated to support a section 5.4b(5) claim, and the NJEA's actions in not conducting an investigation and providing legal counsel were internal union matters beyond the Act's jurisdiction where there were no facts alleged that the NJEA's actions were arbitrary, discriminatory, or in bad faith.

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MARCELLA SIMADIRIS,

Charging Party.

Appearances:

For the Respondent, Paterson Education Association,  
(Sasha Wolf, NJEA Field Representative)

For the Respondent, Paterson Public Schools,  
Law Offices of Robert E. Murray, attorneys,  
(Robert E. Murray, of counsel)

For the Respondent, New Jersey Education Association,  
Mellk O'Neill, attorneys  
(Arnold M. Mellk, of counsel)

For the Charging Party,  
(Marcella Simdiris, pro se)

**REFUSAL TO ISSUE COMPLAINT**

On January 31, 2019, Marcella Simadiris (Simadiris) filed an unfair practice charge (CI-2019-028) against the Paterson Education Association (Association) and Paterson Public School

District (District). In the charge, Simadiris alleges: (1) the Association colluded with the District to jeopardize her job security and protections by failing to provide her with status updates on her grievances; (2) Association President McEntee cyberbullied her on February 1, 2018 via the Association's Facebook page after she had advocated for better working conditions; (3) the Association "blackballed" her during the 2016-2017 school year through February 16, 2018; (4) the District targeted and disciplined her for insubordination on February 16, 2018 after she asked the chief custodian where the District was obtaining its cleaning supplies; and (5) the District retaliated against her on the basis of union membership. Simadiris contends that these alleged actions by the Association and the District violated sections 5.4a(1), (2), (3), (4), (5), and (7),<sup>1/</sup> and

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<sup>1/</sup> 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 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;" and "(7) Violating any of the rules and regulations established by the commission."

also sections 5.4b(1), (2), (3), and (5)<sup>2/</sup> of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq.

Then, on October 19, 2020, Simadiris filed a separate unfair practice charge (CI-2021-007) against the New Jersey Education Association (NJEA). In this charge, Simadiris alleges that the NJEA breached its duty of fair representation by (1) ignoring her requests for an investigation into her allegation that she was cyberbullied on the Association's Facebook page; (2) preventing her NJEA-provided attorney from properly representing her against the tenure charges brought by the District, in an attempt to "weaken her defense;" and (3) failing to provide her with assistance in filing legal complaints against the District. Simadiris claims that the NJEA's alleged actions violated sections 5.4a(1), (3), (4), and (7),<sup>3/</sup> and also sections 5.4b(1),

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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 adjustments 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;" and "(5) Violating any of the rules and regulations established by the commission."

3/ See footnote 1.

(2), and (5)<sup>4/</sup> of 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.

Simadiris is employed by the District as a physical education teacher and is a member of the Association. The Association is the exclusive majority representative of a negotiations unit that includes, but is not limited to, certificated personnel employed by the District. The Association and the District are parties to a collective negotiations agreement (CNA) effective July 1, 2017 through June 30, 2022.

In CI-2019-028, Simadiris alleges, in part: (1) she was cyberbullied by Association President McEntee on February 1, 2018; (2) the Association "blackballed" her during the 2016-2017 school year through February 16, 2018; and (3) the District disciplined her for insubordination on February 16, 2018. These three allegations occurred more than six months prior to January 31, 2019, the date on which CI-2019-028 was filed.

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<sup>4/</sup> See footnote 2.

Simadiris requested that the NJEA conduct an investigation into her allegations of cyberbullying by Association President McEntee. The NJEA has not conducted the requested investigation.

NJEA provided Simadiris with an attorney to defend against the tenure charges brought by the District. Simadiris has requested that her NJEA-provided attorney also file legal complaints on her behalf against the District, but no such legal complaints have been filed.

### **ANALYSIS**

#### **Charge Against the Association and District (CI-2019-028)**

Simadiris contends that the alleged conduct by the Association and District violated sections 5.4a(1), (2), (3), (4), (5), and (7), and also sections 5.4b(1), (2), (3), and (5) of the Act. As an individual employee, Simadiris lacks standing to pursue the section 5.4(b)(2) and (3) claims. See N.J. State PBA & PBA Local 199 (Rinaldo), D.U.P. No. 2011-4, 38 NJPER 53, 56 (¶7 2010), aff'd P.E.R.C. No. 2011-83, 38 NJPER 56, 58 (¶8 2011) (Commission agrees with the Director of Unfair Practices that "an individual employee does not have standing to assert a violation of the employer's right to select its own negotiations or grievance representatives . . ." under section 5.4b(2)); Essex Cty. & Pub. Employees Supervisors Union (Miller), D.U.P. No. 2018-12, 44 NJPER 475, 478 (¶132 2018), aff'd P.E.R.C. No. 2019-16, 45 NJPER 195, 198 (¶50 2018) (holding individual employees do

not have standing to pursue a section 5.4b(3) claim). I also dismiss the 5.4a(7) and 5.4b(5) claims because the charge does not allege that any rules or regulations of the Commission were violated. See Borough of Eatontown (Connelly), D.U.P. No. 2013-7, 40 NJPER 30, 32 (¶12 2013) (citing High Point Reg'l Bd. of Ed., D.U.P. No. 80-23, 6 NJPER 214, 215 (¶11105 1980)); Hudson Cty. PBA Local 109 (West), D.U.P. No. 2005-5, 30 NJPER 396, 399 (¶128 2004) (citing Burlington Tp. Bd. of Ed. (Horner), D.U.P. No. 97-31, 23 NJPER 152 (¶28073 1997)).

Additionally, N.J.S.A. 34:13A-5.4c establishes a six-month statute of limitations period for the filing of unfair practice charges. The statute provides, in pertinent part:

. . . no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six-month period shall be computed from the day he was no longer so prevented.

The Commission has held that "[t]he Act does not rigidly bar relief on all causes of action arising more than six months before a charge was filed" and "[i]n determining whether a party was 'prevented' from filing an earlier charge, the Commission must conscientiously consider the circumstances of each case and assess the Legislature's objectives in prescribing the time limits as to a particular claim." State of N.J. (Juvenile Justice) & Judy Thorpe, P.E.R.C. No. 2014-71, 40 NJPER 512, 512

(¶164 2014), aff'd 43 NJPER 353 (¶100 App. Div. 2017), certif. den. 231 N.J. 211 (2017). "Relevant considerations include whether a charging party sought timely relief in another forum; whether the respondent fraudulently concealed and misrepresented the facts establishing an unfair practice; when a charging party knew or should have known the basis for its claim; and how long a time has passed between the contested action and the charge." Id. (citing Kaczmarek v. N.J. Tpk. Auth., 77 N.J. 329 (1978)); accord West Orange Bd. of Ed., H.E. No. 2018-11, 44 NJPER 426, 430 (¶120 2018), aff'd P.E.R.C. No. 2019-10, 45 NJPER 144 (¶37 2018).

The following allegations all occurred more than six months prior to January 31, 2019, the date on which CI-2019-028 was filed: (1) the February 1, 2018 cyberbullying incident by Association President McEntee; (2) the Association's "blackballing" of Simadiris during the 2016-2017 school year through February 16, 2018; and (3) the February 16, 2018 discipline from the District for insubordination. Further, there is nothing in the facts alleged to suggest that Simadiris was prevented from filing a charge within six months of the alleged actions by the Association and the District. See Kaczmarek, 77 N.J. at 339-40. Accordingly, the allegations regarding cyberbullying, "blackballing," and discipline for insubordination are all untimely. See N.J.S.A. 34:13A-5.4c.



As to the remaining allegations of collusion and retaliation, Simadiris has not set forth in the charge a "clear and concise statement of the facts" sufficient to justify the issuance of a complaint. See N.J.A.C. 19:14-1.3(a); Edison Tp., D.U.P. No. 2012-9, 38 NJPER 269, 271 (¶92 2012), aff'd P.E.R.C. No. 2013-84, 40 NJPER 35, 37 (¶14 2013); Warren Cty. Coll., P.E.R.C. No. 2018-25, 44 NJPER 287, 289-90 (¶80 2017). With regard to her collusion claim, Simadiris asserts that the Association "used delay tactics in collusion with [the District] to diminish [her] abilities in ensuring [her] job security and protection of [her] livelihood by failing to indicate to [her] where they are in representing [her] in grievances, one of which could possibly lead to a whistleblower case and prove [her] innocence in false claims that have resulted in [her] suspension, filed on March 16<sup>th</sup>, 2018." In support of her retaliation claim, Simadiris alleges that the District retaliated against her on the basis of union membership "in allowing and cultivating a culture where [her] rights to due process were repeatedly ignored on February 16<sup>th</sup>, 2018 and September 2018" and that "[t]his environment contributed to [her] being placed on suspension on October 24<sup>th</sup>, 2018 and under investigation."

Missing from Simadiris's allegations of collusion and retaliation are the "who, what, when and where" information about the commission of an unfair practice that is required under our

pleading standards. See Rutgers Univ., D.U.P. No. 2023-14, 49 NJPER 297 (¶69 2022); N.J. State Judiciary, D.U.P. No. 2022-8, 48 NJPER 344, 348 (¶77 2022) (citing Warren Cty. Coll., 44 NJPER at 289-90). Instead, the charge contains only vague and conclusory allegations in support of the collusion and retaliation claims, which cannot justify the issuance of a complaint. See Town of Westfield, P.E.R.C. No. 90-32, 15 NJPER 618, 618 (¶20257 1989) (explaining that “[t]he Director of Unfair Practices routinely informs charging parties that conclusory statements in a charge are insufficient for Complaint issuance”).<sup>5/</sup>

#### **Charge Against the NJEA (CI-2021-007)**

In this charge against the NJEA, Simadiris alleges that the NJEA breached its duty of fair representation by (1) ignoring her requests for an internal union investigation into her allegation that she was cyberbullied by Association President McEntee; (2) preventing her NJEA-provided attorney from properly representing her against tenure charges; and (3) failing to provide her with assistance in filing legal complaints against the District. Simadiris claims that NJEA’s actions violated sections 5.4a(1), (3), (4), and (7), and also sections 5.4b(1), (2), and (5) of the

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<sup>5/</sup> The charge is unclear as to when certain alleged instances of collusion and retaliation took place, but Simadiris alleges that some of the conduct occurred more than six months prior to the filing of the charge on January 31, 2019. To the extent that any complained of conduct occurred before July 31, 2018, the allegations are also dismissed as being time barred. See N.J.S.A. 34:13A-5.4c.

Act.

Initially, I dismiss the section 5.4a(1), (3), (4), and (7) allegations because these sections do not apply to labor organizations, but only to public employers. Likewise, I dismiss the 5.4(b)(2) claim because Simadiris, as an individual, lacks standing to pursue this claim. See N.J. State PBA & PBA Local 199 (Rinaldo), 38 NJPER at 58. I also dismiss the 5.4b(5) claim because the charge does not allege that any rule or regulation of the Commission was violated. See id.; Hudson Cty. PBA Local 109 (West), 30 NJPER at 399. Therefore, only the section 5.4b(1) claim remains.

The Commission has recognized a breach of the duty of fair representation as one type of claim a unit employee may bring against his or her majority representative under section 5.4b(1). N.J. State PBA & PBA Local 199 (Rinaldo), 38 NJPER at 57. The Supreme Court of the United States has held that “[a] breach of the statutory duty of fair representation occurs when a union’s conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.” Vaca v. Sipes, 386 U.S. 171, 190 (1967). To establish a breach of the duty of fair representation, the claimant must “adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives.” Amalgamated Ass’n v. Lockridge, 403 U.S. 274, 301 (1971). New Jersey courts and the Commission

have adopted the Vaca standard in deciding fair representation cases arising under the Act. See Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409, 427-28 (1970); Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486, 491 (App. Div. 1976); Jersey City Housing Auth., P.E.R.C. No. 2015-70, 41 NJPER 477, 479 (¶148 2015), aff'd 43 NJPER 255, 256 (¶77 App. Div. 2017); OPEIU Local 133, P.E.R.C. No. 84-60, 10 NJPER 12, 13 (¶15007 1983). In examining a duty of fair representation claim, the majority representative must be afforded a wide range of reasonableness in serving the unit it represents. PBA Local 187, P.E.R.C. No. 2005-78, 31 NJPER 173, 175 (¶70 2005) (citing Belen, 142 N.J. Super. at 490-91).

Even assuming that the NJEA, as the parent organization of the Association, owed a duty of fair representation to Simadiris, the alleged facts do not demonstrate that the NJEA breached its duty. As to Simadiris's allegation that the NJEA breached the duty of fair representation by ignoring her request for an internal union investigation into allegations of cyberbullying, the Commission has generally been reluctant to intercede in an intra-union dispute such as this. See City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 565-66 (¶13260 1982).

With regard to Simadiris's claims involving her legal representation, it must be noted that there is no obligation under the Act for a union to provide legal counsel. See Bergen

Cnty. Coll. Faculty Ass'n, P.E.R.C. No. 84-117, 10 NJPER 262, 263 (¶15127 1984); Englewood Bd. of Ed. & Englewood Teachers Ass'n (Mazzocoli), D.U.P. No. 2022-4, 48 NJPER 231, 234 (¶52 2021), aff'd P.E.R.C. No. 2022-24, 48 NJPER 281, 283 (¶61 2021) ("Union-paid counsel isn't a right guaranteed to employees by the Act."). The decision to provide legal counsel to a unit member has long been held to be an internal organizational matter beyond our Act's jurisdiction, and does not amount to an unfair practice, absent facts demonstrating that the decision was arbitrary, discriminatory, or in bad faith. NJEA (DaPonte), D.U.P. No. 2014-1, 40 NJPER 148, 149 (¶56 2013) (citing Bergen Cnty. Coll. Faculty Ass'n, 10 NJPER 262).

Notwithstanding the fact that the NJEA is not required to provide legal representation, Simadiris nevertheless maintains that the NJEA breached its duty of fair representation by providing inadequate legal counsel. In support of this claim, Simadiris alleges:

While the NJEA has provided me with an attorney, they have prohibited the attorney from properly communicating with and defending me. The latest attempt prohibited my lawyer from filing a complaint regarding an action that pertained to the terms and conditions of employment. It also appears the organization prevented my lawyer from even writing the judge, who ruled in my favor last summer, to inform him that his orders were not being upheld. Many of the specifications brought against me are union related and have not been stricken from the unbecoming conduct tenure charge against me.

Simadiris does not provide any specific relevant facts to support her allegation that the NJEA is not properly defending her against the tenure charges, other than merely pointing out that the tenure charges have not been dismissed. However, neither the NJEA nor Simadiris's appointed attorney has the power to remove tenure charges because charges may only be withdrawn or settled with approval of the Commissioner of Education and the District once certified. See N.J.A.C. 6A:3-5.6. Regarding Simadiris's allegation that the NJEA committed an unfair practice by preventing her attorney from filing a legal complaint on her behalf, a union does not commit an unfair practice by refusing to provide legal assistance to pursue a lawsuit. See Bergen Cmty. Coll. Faculty Ass'n, 10 NJPER at 263 (Commission finding no unfair practice when Association withdrew legal assistance from an employee pursuing a federal court case). Further, Simadiris does not allege any facts demonstrating that the NJEA's actions in relation to her appointed attorney were in any way arbitrary, discriminatory, or in bad faith so as to bring the alleged conduct within the scope of our jurisdiction. See NJEA (DaPonte), 40 NJPER at 149 (citing id.). Accordingly, the alleged facts do not establish that the NJEA violated the Act with regard to the legal representation it provided to Simadiris.

For all of the foregoing reasons, I find that the Commission's complaint issuance standard has not been met and

decline to issue a complaint.

**ORDER**

The unfair practice charges are dismissed.

/s/ Ryan M. Ottavio  
Ryan M. Ottavio  
Director of Unfair Practices

DATED: June 12, 2023  
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 June 22, 2023.**