

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

In the Matter of

JERSEY CITY BOARD OF EDUCATION
AND JERSEY CITY EDUCATION ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-78-33

SARAH R. MARTINEZ,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue complaints with respect to unfair practice charges filed by an individual against her former employer and her majority representative. The charge against the employer was not filed within the 6 month statutory limitations period. Regarding the charge against the majority representative, the Charging Party alleged that it failed to continue to pursue her grievance after the grievance was initially rejected, but the Charging Party did not allege that the majority representative's conduct was arbitrary, discriminatory, or in bad faith.

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Appearances:

For the Respondent Board of Education
Louis Serterides, Assistant Attorney

For the Respondent Education Association
Philip Feintuch, Attorney

For the Charging Party
Sarah R. Martinez, pro se

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on April 23, 1978, by Sarah R. Martinez (the "Charging Party") against the Jersey City Education Association (the "Association") alleging that the Association was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A.34:13A-1 et seq. (the "Act"). Specifically, the Charge alleges that the Association, in failing to proceed to the next step of the grievance procedure, did not properly protect the

Charging Party's interest in the grievance concerning her termination in December 1976, thereby violating N.J.S.A. 34:13A-5.4(b) (1) and (3). ^{1/} On November 8, 1978, an amendment to the Charge alleged that the Jersey City Board of Education (the "Board") also engaged in unfair practices violating N.J.S.A. 34:13A-5.4(a) (1) and (3) ^{2/} by failing to rehire the Charging Party in September 1977, because she filed grievances during her prior employment. ^{3/}

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 authority to issue a complaint stating the unfair practice. ^{4/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging, if true, may constitute an unfair practice within the meaning of

- ^{1/} These subsections 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. (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.
- ^{2/} 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. (3) Discriminating in regard to hire or tenure of employment of any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.
- ^{3/} The Commission's processing of this matter was deferred, pending disposition of a related case in federal court. When that case was dismissed on June 6, 1980, the charging party requested that the Commission renew its inquiry into this matter.
- ^{4/} N.J.S.A. 34:13A-5.4(c) provided: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practices ... 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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof ... "

the Act. ^{5/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{6/}

Pursuant to N.J.S.A. 34:13A-5.4(c), the Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides: "Provided that 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 undersigned determines that the charge against the Association may be timely, ^{7/} but a complaint may not issue for the reasons cited below inasmuch as the facts, as alleged, do not meet the statutory standard for the issuance of a complaint. As for the charge against the Board, the undersigned determines that it is untimely and a complaint may not issue.

First, the charge against the Association will be considered. The Charging Party, in her original charge filed on April 26, 1978, admits that on June 21, 1977, the Association did represent the Charging Party in a grievance hearing before the Assistant Superintendent. In an amendment to the charge filed on November 8, 1978, the Charging Party admits that during this hearing she agreed to wait until September 1977, to proceed to the next step in the grievance procedure. On September 6, 1977, the Charging Party requested, by letter, that the chairman of the grievance committee instruct the Association's attorney to proceed

^{5/} N.J.A.C. 19:14-2.1

^{6/} N.J.A.C. 19:14-2.3

^{7/} The charge against the Association may arguably be considered as timely filed pursuant to the principles established in Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978).

with the grievance. Accordingly, it is alleged that the Association committed an unfair practice by its failure to respond to the Charging Party's September 6, 1977 letter and proceed to the next step of the grievance procedure.

N.J.S.A. 34:13A-5.3 provides that a majority representative shall represent the interests of all unit employees without discrimination and without regard to employee organization membership. While a majority representative has a statutory obligation to initially present a grievance to the public employer on behalf of a unit member, there is no statutory obligation that the majority representative process grievances through various levels of the grievance procedure beyond the initial presentation level. However, under §5.3, the majority representative has a statutory obligation to fairly represent the interests of all employees within its unit and a violation of such duty is cognizable under N.J.S.A. 34:13A-5.4(b)(1). In the context of grievance proceedings a union violates the duty of fair representation only where it has acted arbitrarily, discriminatorily or in bad faith in failing to further pursue the grievance. In re N.J. Turnpike Employees Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶ 10215 1979).

The charge does not allege such conduct on the part of the Association, but simply asserts that the Association did not represent her interests because it failed to instruct its attorney to proceed to the next step of the grievance procedure, and, when the Charging Party met with the President of the Association, "his attitude left much to be desired." In response to a request for further clarification of her allegations, the Charging Party submitted certain documents as an addendum to the charge. These documents reveal that at the June 21, 1977, step-three grievance hearing, the Charging Party's primary contentions were that the Board violated Article 6.1 of the contract when, without just cause, it

declined to offer her a position as a bilingual teacher, transferred her to another school in a position of Title I Teacher Assistant, and finally terminated her services. It was further alleged that the Board violated Article 22.2 when it failed to pay the Charging Party her full salary while she was absent due to an injury she suffered while discharging her duties. The Assistant Superintendent granted that portion of the grievance relating to Article 22.2, but denied the other grievances relating to Article 6.1.

The undersigned concludes that these facts, if true, would not constitute an unfair practice by the Association under N.J.S.A. 34:13A-5.4(b)(1). Absent arbitrary, discriminatory or bad faith conduct, an Association's mere refusal to proceed to the next step of the grievance procedure does not of itself constitute a breach of the duty of fair representation. ^{8/} There is no fact alleged herein to suggest that the Association's decision not to proceed was based upon other than legitimate considerations. Therefore, the facts alleged, if true, would not establish that the Association's failure to proceed was arbitrary, discriminatory or in bad faith.

The Charging Party also alleges that the Association has violated N.J.S.A. 34:13A-5.4(b)(3). This charge cannot be brought by a party other than a majority representative. In re Council of N.J. State College Locals, D.U.P. No. 81-8, 6 NJPER 531 (¶ 11271 1980); and In re County of Middlesex, P.E.R.C. No. 81-62, 6 NJPER 555 (¶ 11282 1980). Accordingly, the undersigned determines that the Charging Party may not allege a violation of §(b)(3) and that a complaint shall not issue thereunder.

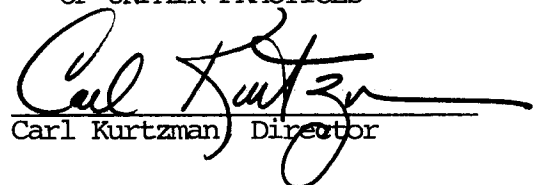
As for the charge against the Board, the Charging Party did not allege any unfair practices against the Board until she filed an amended charge on

^{8/} In re F.O.P. Lodge 62, D.U.P. No. 79-24, 5 NJPER 178 (¶ 10096 1979).

November 8, 1978. This charge alleges that, in violation of N.J.S.A. 34:13A-5.4 (a) (1) and (3) (supra, n. 2), the Board in September 1977, denied the Charging Party a position due to the grievances and complaints she filed while previously employed. This charge was filed more than 13 months after the cause of action accrued and well beyond the six month limitation period for the filing of charges under N.J.A.C. 34:13A-5.4(c).

The undersigned has reviewed the Charging Party's argument that the pendency of E.E.O.C. discrimination complaints excused or tolled the necessity of a prompt filing before the Commission. The E.E.O.C. complaints involved allegations that through transfers, reductions in position and salary, termination and failure to hire as a bilingual teacher, the Charging Party was discriminated against due to her Puerto Rican ancestry, her age, her place of residence and her complaints to public officials concerning this disparate treatment and the manner in which the Board operates its bilingual program. The amended charge alleges that the Board discriminatorily denied Charging Party a position because, during her previous employment, she filed grievances alleging contractual violations by the Board. Therefore, while the Charging Party was diligently pursuing her legal rights before the E.E.O.C. not to be discriminated against due to her sex and national origin, she did not pursue any rights under the Act not to be discriminated against due to the filing of grievances under the contract. Therefore, notwithstanding the E.E.O.C. action, the Charging Party was under an obligation to file a timely charge. See In re State of N.J. (Stockton College), P.E.R.C. No. 77-14, 2 NJPER 308 (1976), affmd 153 N.J. Super. 91 (1977) pet. for certif. den. 78 N.J. 326 (1978). Accordingly, the undersigned is precluded from issuing a complaint against the Board.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: March 18, 1981
Trenton, New Jersey