

D.U.P. NO. 97-35

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

In the Matter of

JOHN MEDICA, PRESIDENT  
(OAKCREST-ABSEGAMI TEACHERS ASSOCIATION),

Respondent,

-and-

Docket No. CI-97-42

SPURGEON BUTLER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Spurgeon Butler against John Medica, President of the Oakcrest-Absegami Teachers' Association. The Director finds that Butler, as an individual, does not have standing to bring his charge that the grievance mechanism of the agreement is being unlawfully abused. Further, the Director finds that the Commission lacks jurisdiction to hear his complaints of racial animus, and that Butler has not alleged what specific Commission rule or regulation was violated with regard to his 5.4(b)(5) allegation.

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Appearances:

For the Respondent,  
New Jersey Education Association  
(Eugene Sharp, Field Representative)

For the Charging Party,  
Spurgeon Butler, pro se

REFUSAL TO ISSUE COMPLAINT

On December 18, 1996, Spurgeon Butler, an individual, who is an administrator with the Greater Egg Harbor Regional Board of Education, filed an unfair practice charge against John Medica, president of the Oakcrest-Absegami Teachers Association, the majority representative of teachers in the district. On January 2, 1997, he amended his charge. The charge, as amended, alleges that the Association violated subsection 5.4(b)(5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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<sup>1/</sup> This subsection prohibits employee organizations, their representatives or agents from: "(5) Violating any of the rules and regulations established by the commission."

by initiating a series of reprisals against Butler because Butler was one of a number of Association members who filed an unsuccessful unfair practice charge against the Association regarding longevity language in the 1993-94 salary guide.<sup>2/</sup> According to Butler, after the unfair practice charge was resolved, Medica made a statement to the Principal that it is "now payback time" for those Association members who supported the charge against the Association. As a result, Butler, who is no longer a member of the unit, claims that Association members thereafter filed grievances against him in his capacity as an administrator.

Butler further claims that Medica used the word "nigger" in front of him and lobbied Board members and the Superintendent not to grant him tenure. Moreover, Butler claims that Medica, in a December 4, 1996 letter to the Principal, Superintendent, Business Administrator and Board members, made false statements about him. According to Butler, Medica wrote the letter without the knowledge or acquiescence of the Association executive board or membership.

In addition, Butler claims that Medica conspired and/or caused Marge Guenther, Association Vice President, to write a

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<sup>2/</sup> Mr. Butler alleges that this dispute was brought as a grievance and he was successful in the grievance. However, the NJEA points out that Butler did not file a grievance. Rather, he participated in an unfair practice charge, CI-94-24, which was the subject of a Commission Litigation Alternative Program hearing.

December 20, 1996 memo in which she informed Association members of Butler's charge. Butler claims that the memo violates Article X of the 1992-94 agreement between the Association and the Board and was published in retaliation for his filing this charge. Butler claims that Medica's actions show racial animus towards him.

The Association claims that Butler does not have standing to file the instant charge, as he is an administrator and is not part of the unit represented by the Association. The Association points out that Commission cases filed against a majority representative like the Association have been filed by unit members, not non-unit members like Butler. Further, the Association asserts that Butler has not identified any activities by the Association which are prohibited by subsection 5.4(b)(5). Finally, the Association notes that Butler's complaints are based upon grievances brought against him in his position as an administrator and the Commission is not the proper forum for these matters to be addressed.

#### ANALYSIS

Butler does not have standing to bring this action. Butler, as an administrator, is not in the Association's unit. Therefore, the Association has no duty to fairly represent Butler. See N.J.S.A. 34:13A-5.3. Nor can Butler, as an individual, claim the grievance mechanism of the collective negotiations agreement is being unlawfully abused. Normally, only

the parties to the agreement, here the Association and the Board of Education, have standing to contest the application or interpretation of a collective negotiations agreement. Orange Tp. and MEBA, D.U.P. No. 94-49, 20 NJPER 271 (¶25136 1994).

Since Butler has otherwise failed to allege facts which, if true, would constitute an unfair practice, Butler's allegations of racial animus and, specifically, the use of the word "nigger" also must fall. Such conduct by itself concerns alleged unlawful employment practices within the meaning of the New Jersey Law Against Discrimination. N.J.S.A. 10:5-1 et seq. See State of New Jersey (Hum. Serv.), D.U.P. No. 97-12, 22 NJPER 333 (¶27173 1996); Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264, 265 (¶20112 1989). The Commission lacks jurisdiction to hear this charge where it is not otherwise inter-related with an allegation of an unfair practice.

Finally, Butler has not alleged what specific Commission rule or regulation was violated or presented any facts in support of his 5.4(b)(5) allegation.<sup>3/</sup>

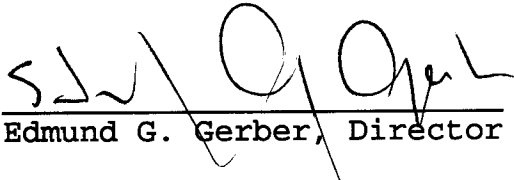
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<sup>3/</sup> On February 27, 1996, I notified the parties of my preliminary findings. Butler responded and expanded upon his earlier arguments. He makes the further argument that his "standing to bring this action stems from a provision of the collective negotiations agreement which provides no reprisal of any kind shall be taken by either party against any party in interest, any building representative or any other participant in the grievance procedure by reason of such participation." However, if Butler believes this

Therefore, I find that the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge.<sup>4/</sup>

Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: March 17, 1997  
Trenton, New Jersey

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<sup>3/</sup> Footnote Continued From Previous Page

contract provision has been violated, he should have filed a grievance to enforce his contract rights. A mere allegation of a breach of contract does not constitute an unfair practice. State of New Jersey (Dept. of Hum. Serv.), P.E.R.C. No. 84-148, 10 NJPER 419 (15191 1984).

<sup>4/</sup> N.J.A.C. 19:14-2.3.