

D.U.P. NO. 91-1

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

In the Matter of

MARLBORO TP. BOARD OF EDUCATION
& MARLBORO TP. BUS DRIVERS' ASSOCIATION,

Respondents,

-and-

Docket No. CI-89-77

GEORGE WATSON, JR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on charges that the Marlboro Township Board of Education violated subsections 5.4(a)(1), (2), (3), (4), (5), (6) and (7) of the Act by placing disciplinary letters in his personnel file, engaging in racial discrimination, attempting to eliminate his bus driver position and refusing to process grievances. The Director found that no facts warranted the issuance of a complaint.

Watson also alleged that Marlboro Township Bus Drivers' Association violated the duty of fair representation by refusing to file grievances. The Association's acts allegedly violate subsections 5.4(b)(1), (2), (3), (4) and (5) of the Act. The Director dismissed all allegations except one concerning the union's alleged failure to file a February 1989 grievance.

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Appearances:

For the Respondent Board of Education
DeMaio & DeMaio, attorneys
(Vincent C. DeMaio, of counsel)

For the Respondent Bus Drivers' Association
Klausner & Hunter, attorneys
(Brian M. Cige, of counsel)

For the Charging Party
George Watson, Jr., pro se

DECISION

On March 1, 1989, George Watson, Jr. ("charging party") filed an unfair practice charge against the Marlboro Township Bus Drivers' Association ("Association") alleging that a "series of adverse letters" were placed in his personnel file, violating N.J.S.A. 34:13A(1)-(7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

On March 6, we advised him that the charge failed to specify the time and date of the alleged violation and that there was no certification of service.

On March 22, Watson filed a certification and an amendment alleging that he started working as a bus driver in September 1989; had refused to take a medical test for "health reasons"; that the Board's insistence that he take the test was a "violation of civil rights" as was its use of a tape recorder. He also alleged that on or about February 2, 1989, he asked an Association shop steward to file a grievance seeking to remove "harassment letters" from his personnel file. He asserted that "their response to me was that there was no discrimination and didn't file any action."

On July 31, 1989, Watson filed an amendment alleging that "management" had unsuccessfully tried to eliminate eight bus driver

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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 the 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

positions including his position and that the "Board [Marlboro Township Board of Education ("Board")] and Administration support each other in discrimination as evidenced in that request and later in my request for a suspension without pay for the fact that I complained to the Administration and then later filed a complaint to [PERC]." The actions allegedly violated N.J.S.A. 34:13A-5.4(a)(1), (3), (4), (5), (6) and (7) of the Act. He alleged that he filed grievances with a supervisor who responded "they were not going to process my grievance at their level."

His amendment also alleged that, "the Administration has established itself with a pattern of racial discrimination, with deception of the public, trumping up charges.... There are no black administrators and they woul[d] do anything not to have any." Finally, Watson attached a copy of a "charge of discrimination" he filed with the New Jersey Division on Civil Rights. He asserted that the Board had discriminated against him on June 19, 1989, when he was informed that he would be suspended from work for an "unexcused absence."

Watson was advised in writing that any amendment should have "an accompanying explanatory statement setting forth in detail the dates and significance of each document and which respondent each document concerns."

On March 15, 1990, Watson filed an amendment alleging that the Board "has not processed any grievance that I filed to date." The alleged evidence of the Board's unlawful acts is Watson's

"comprehensive grievances and formal notices given to the union...in June 1989."

He also alleged that the Association refused to file any grievances on his behalf. Watson also filed about 20 documents without an explanatory note. A copy of a grievance he filed on or about June 20, 1989, alleged that a Board administrator was willing to "harbor differential treatment of black employees" and the settlement requested is a hearing before the Board and "removal of letters because discipline requested is in violation of federal case law." Also enclosed is the Board's June 27 "reply to grievance received June 21, 1989...." The Board's representative denied the grievance at step one. Other documents are warnings and reprimands filed by the Board in 1989 and 1990.

The Board and Association assert that no complaint should issue. The Board is uncertain about what alleged unfair practices have been filed against it.

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 the authority to issue a complaint stating the unfair practice charged.^{2/} The Commission

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof,

has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

On June 28, 1990, I issued a letter tentatively dismissing all but one of Watson's charges. No responses were filed.

Watson specifically alleges that the Association refused to file a grievance on his behalf on or about February 2, 1989. The grievance ostensibly concerned a "second warning" Watson received for not following his bus route schedule. He also asserted that the Association unlawfully refused to process "any grievances" for ten months. The parties' grievance procedure ends in binding arbitration.

Watson also asserts that the Board refused to process two grievances he filed in June 1989 -- one filed with the

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shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

3/ N.J.A.C. 19:14-2.1.

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

transportation coordinator and the other with the assistant superintendent of schools.

Watson filed copies of his June 20, 1989 grievance and the transportation coordinator's step one response dated June 27, 1989. The grievance was denied concerning "all allegations made on official grievance forms dated June 20" and concerning the "...letter to [assistant superintendent of schools] dated June 20." The Board responded at step one to Watson's June 1989 grievances. Accordingly, I dismiss this portion of the charge. Watson has not alleged sufficient facts to suggest that the Board had discriminated against him for filing a charge with the Commission. The decision to eliminate job positions is not necessarily an unfair practice and no nexus exists between Watson's disciplinary charges and the filing of the unfair practice charge. Accordingly, I dismiss this portion of the charge. Finally, Watson has alleged no facts suggesting that the Board violated subsections 5.4(a)(6) and (7) of the Act.

I also dismiss Watson's charge that the Association refused to process "any grievances." This allegation is not a "concise statement of the facts constituting the alleged unfair practice", including the "time and place of occurrence" required by N.J.A.C. 19:14-1.3. I had advised the charging party of this requirement in several letters.

In D'Arrigo v. State Board of Mediation, Dkt. No. A-56, 5/31/90, the New Jersey Supreme Court stated,

...there is a corresponding duty on the part of the union to perform the 'processing of grievances for all employees in the unit, and the

right to do so must always be exercised in with complete good faith, honesty of purpose without discrimination against a dissident employees or group of employees. (Citing, Lullo v. Int'l Ass'n of Firefighters, 55 N.J. 409 (1970))

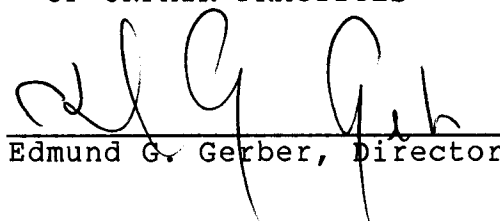
...If a meritorious grievance is not pursued on behalf of an employee, the labor representative is subject to the charge of an unfair labor practice under N.J.S.A. 34:13A-5.4(b).

The only remaining allegation implicating the duty of fair representation concerns the Association's alleged refusal to process a February 2, 1989 grievance.

The Commission has no statutory authority to hear or decide cases concerning alleged violations of a citizen's civil rights. See N.J.S.A. 10:1-1 et seq. Accordingly, we dismiss charges implicating violations of Mr. Watson's civil rights.

Accordingly, I dismiss all allegations filed against the Board and all allegations filed against the Association except one concerning the alleged refusal to file a grievance on or about February 2, 1989. Under our Act, a refusal to process a grievance could violate subsection 5.4(b)(1) of the Act. I will therefore issue a complaint and notice of hearing on that portion of Watson's charge. I dismiss all other portions of the charge because Watson has not alleged any facts suggesting how the Association violated subsections 5.4(b)(2), (3), (4) and (5) of the Act.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: July 17, 1990
Trenton, New Jersey