



STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

---

NEW JERSEY AFT/AFL-CIO and	:	
GLASSBORO STATE COLLEGE	:	
AFT/AFL-CIO,	:	
	:	
Respondent,	:	
	:	
-and-	:	Docket No. CI-85-99-33
	:	
ROY L. JONES,	:	
	:	
Charging Party.	:	

---

RULING ON MOTION FOR SUMMARY JUDGMENT

On February 26, 1985, Roy L. Jones filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that New Jersey AFT, AFL-CIO and Glassboro State College AFT, AFL-CIO ("NJSFT") violated sections 5.4(b)(1) thru (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). In a 20-count charge, Jones alleged that certain actions of NJSFT were arbitrary, hostile and prejudicial to him in suspension proceedings before the Chancellor of Education.

On March 5, 1985, the Director of Representation wrote a letter to Jones informing him that the charge could not be processed until requirements of N.J.A.C. 19:14-1.3, N.J.A.C. 19:14-1.5 and N.J.S.A. 34:13A-5.4(c) were satisfied.

On March 11, 1985, NJSFT filed a general denial of the charges.

On March 25, 1985, Jones amended the charge. On April 3, 1985, the Director wrote Jones advising him that a timeliness issue still existed under N.J.S.A. 34:13A-5.4(c). Jones responded on April 22, 1985. An exploratory conference was conducted on May 14, 1985.

On June 25, 1985, the Director again wrote Jones, this time advising him that the charge did not appear to be complaintable. The Director invited Jones to respond to the letter with a factual submission to support allegations that NJSFT violated the Act. After receiving an extension of time, Jones filed a response on July 15, 1985.

On August 14, 1985, the Director dismissed all allegations of the charge, except one concerning testimony given by NJSFT Local President, Dr. Rose Glassberg, to an investigator from the Division of Civil Rights. Jones claims that Glassberg's testimony amounted to a violation of NJSFT's duty to fairly represent him because it was false, defamatory and prejudiced him in a suspension proceeding.

On August 14, 1985, the Director also issued a Complaint and Notice of Hearing encompassing Jones' claim that Glassberg's testimony violated NJSFT's duty of fair representation. A hearing was scheduled for October 24, and 25, 1985.

On August 21, 1985, NJSFT filed an answer generally denying the §5.4(b)(1) allegation. On October 11, 1985, it filed a motion for summary judgment, a supporting brief and a request to stay the hearing. On November 22, 1985, after receiving an extension of time, Jones filed a response.

On December 16, 1985, the Chairman referred the motion to me for a ruling.

In support of its motion, NJSFT asserts that: Jones lacked standing to file the charge because he was not an NJSFT member in good standing (hadn't paid his dues since 1982); Glassberg was not acting in her capacity as union president when she gave testimony to the civil rights investigator; Jones failed to present evidence showing that Glassberg's testimony was arbitrary, capricious or given in bad faith; and the duty of fair representation claim was inappropriate because the acts complained of arose outside the context of the negotiation or administration of a collective negotiations agreement.

Jones generally disagrees with NJSFT's assertions and states that he cannot file a proper response until he obtains certain information through discovery.

Pursuant to N.J.A.C. 19:14-4.8(d), summary judgment may be granted: "[i]f it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law..."

A motion for summary judgment will be granted with extreme caution. The moving papers are to be considered in the light most favorable to the party opposing the motion and all doubts are to be resolved against the movant. The summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182, 185 (App. Div. 1981). In light of these principles, the Commission has been reluctant to grant summary judgments. See,

Essex County Educational Services Commission, P.E.R.C. No. 83-65, 9  
NJPER 19, 20 (¶14009 1982).

In this case, summary judgment is inappropriate. A review of the pleadings, briefs and other documentation filed in this matter reveals that material facts are still at issue. For example, the parties disagree on whether Glassberg testified in her capacity as union president when interviewed by the civil rights investigator. NJSFT has also generally denied allegations that Glassberg's testimony was false and misleading.

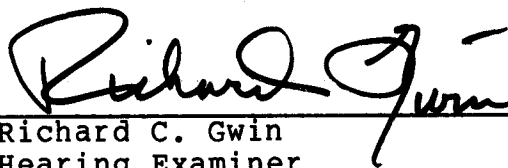
Jones has alleged that his union president gave false testimony in an administrative investigation that was detrimental to his employment. I cannot say, as a matter of law, that this may not constitute a violation of §5.4(b)(1). Thus, at least at the summary judgment level, I reject NJSFT's assertion that the claim is inappropriate because it extends beyond the negotiations agreement.

I also reject NJSFT's claim that Jones somehow waived his right to file a duty of fair representation action because he hadn't paid his union dues since 1982. His membership in NJSFT is not a prerequisite for standing to file an unfair practice charge alleging that the union has not fairly represented him.

Thus, because material facts are still at issue and because I cannot conclude, as a matter of law, that NJSFT is entitled to the relief it seeks (dismissal of the charge), I deny NJSFT's motion for summary judgment.

ORDER

The Motion for Summary Judgment is denied.

  
Richard C. Gwin  
Hearing Examiner

DATED: March 10, 1986  
Trenton, New Jersey