

D.U.P. NO. 95-32

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

In the Matter of

NEWARK TEACHERS UNION,

Respondent,

-and-

Docket No. CI-95-58

ELOUISE A. McDANIEL,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the union breached its duty of fair representation by refusing to provide legal representation or reimbursement and refused to process a grievance. The Director finds that the charge is untimely. The Director further finds that the decision to provide legal counsel is an internal union matter over which the Commission does not have jurisdiction, absent facts showing that the union's conduct was arbitrary, discriminatory or in bad faith, none of which were alleged here.

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Appearances:

For the Respondent
Carole A. Graves, President

For the Charging Party
Elouise A. McDaniel, pro se

REFUSAL TO ISSUE COMPLAINT

On February 23, 1995, Elouise A. McDaniel filed an unfair practice charge against the Newark Teachers Union ("NTU") with the Public Employment Relations Commission, alleging that the NTU failed to help her process a grievance and refused to provide her with legal representation. Charging Party alleges that these actions violate the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(b)(3) and (5).^{1/} McDaniel has also requested

^{1/} These subsections prohibit public employee organizations, their representatives or agents from: (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.

payment from the NTU for fees she incurred by obtaining private legal representation.

McDaniel is a teacher at the Newark Board of Education with 24 years service. She is a member of the negotiations unit represented by the Newark Teachers' Union. On September 9, 1992, McDaniel was involuntarily transferred from the Wilson Avenue school to the Clinton Avenue school. She alleges that this transfer was done in retaliation for her having been "vocal in exercising [her] rights as a taxpayer and citizen of the state of New Jersey." On October 1, 1992, McDaniel forwarded a letter and grievance concerning her transfer to Carole Graves, president of NTU #481. She alleges that the NTU did not respond and "did nothing to help [her]." McDaniel obtained her own legal counsel to pursue her complaint about her transfer in October 1992. On December 27, 1994, McDaniel also requested from Graves a refund of dues paid to the union to cover her attorney's fees. McDaniel's case against the Board was recently settled and in her charge she further requests a reimbursement of dues to cover her attorney's fees. No facts are alleged that indicate that the NTU has provided other members with legal counsel or reimbursement for attorney's fees.

I find that the charge does not meet the Commission's complaint issuance standards. The Commission is precluded from issuing a complaint where a charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides:

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 months period shall be computed from the day he was no longer so prevented.

This charge was filed on February 23, 1995. Thus, we cannot issue a complaint on any alleged unfair practice which occurred before August 23, 1994. McDaniel's first letter to Graves concerning the transfer was in October 1992. I find that McDaniel knew or should have known that the NTU was not going to assist her with her grievance or provide legal assistance well before August 23, 1994. Thus, it appears both of these allegations -- failure to file or process a grievance and refusal to provide legal representation to process a timely grievance -- are untimely.

McDaniel also wrote to Graves on December 27, 1994, requesting a "full refund from the union of the fee I paid the attorney." This demand was made because of McDaniel's belief that she was supposed to have been given legal representation concerning her transfer in October 1992.

However, it appears that McDaniel misunderstands an individual's rights under the Act to receive legal counsel or reimbursement for legal fees. Absent certain circumstances, we will not find that the failure to provide counsel with legal fees constitutes an unfair practice. Providing counsel or the payment for legal fees are internal union matters and the failure to provide those benefits does not rise to the level of an unfair practice

except where the factual allegations indicate that a union's decision not to provide legal representation was arbitrary, discriminatory or in bad faith. Here, there are no facts alleged which suggest arbitrary, discriminatory or bad faith conduct by the NTU.^{2/}

Therefore, I do not believe that the Commission's complaint issuance standard has been met and decline to issue a complaint on the allegations of this charge. The charge is dismissed in its entirety.^{3/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: May 2, 1995
Trenton, New Jersey

2/ See, Bergen Community College Faculty Association, P.E.R.C No. 84-117, 10 NJPER 262 (¶15127 1984) (Commission found in favor of union charged with withdrawing legal assistance from employee pursuing case in federal court: issue of providing legal assistance to unit employees is internal organizational matter and one not generally within the Commission's jurisdiction); N.J.E.A. (Esser), P.E.R.C. No. 90-113, 16 NJPER 161 (¶21065 1990), aff'g. D.U.P. 90-9, 16 NJPER 161 (¶21065 1990) (charge dismissed where union allegedly declined to provide charging party counsel for internal union appeals); P.B.A. Local 105 (Giordano), D.U.P. No. 90-1, 15 NJPER 457 (¶20186 1989) (charge dismissed where union refused to provide legal counsel or reimburse legal fees for an employee's departmental hearing where allegations of the charge do not indicate that the refusals were made arbitrarily, discriminatorily or in bad faith); Camden County College, D.U.P. No. 89-11, 15 NJPER 171 (¶20072 1989) (charge dismissed on allegation that union refused to provide legal assistance to a unit member for a Commission hearing).

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