

D.U.P. NO. 93-1

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

In the Matter of

NEWARK TEACHERS UNION LOCAL 481,

Respondent,

-and-

Docket No. CI-92-84

ELOUISE A. MCDANIEL,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that a union violated its duty of fair representation by soliciting signatures opposing a letter written by one of its members. The Director finds that the letter, which was highly critical of a school's staff, put the charging party in an adverse position to other unit members. The Director holds that a union may properly determine that the merits of one employee's position are adverse to the position of the majority of unit employees and that none of the actions alleged violate the union's duty of fair representation.

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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 May 11, 1992, Elouise A. McDaniel filed an unfair practice charge with the Public Employment Relations Commission against the Newark Teachers Union, Local 481. The charge alleges that the union violated sections 5.4(b)(3) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. McDaniel is displeased with the representation she has received from Newark Teachers Union Local 481.

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<sup>1/</sup> These subsections prohibit 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 employees in that unit. (5) Violating any of the rules and regulations established by the commission."

McDaniel alleges that union representative Lydia Smith solicited signatures from Wilson School staff members in "hostile opposition" to McDaniel, in response to a letter she wrote that was published in the Newark Star Ledger. In the letter, McDaniel was highly critical of the Wilson School staff and the Board of Education for having two parties on school time for students. The letter questioned the educational benefit of the parties and contended that they deprived students of instructional time.

McDaniel claims that Smith's solicitation of faculty signatures turned teachers and students against her and that Smith was "...trying to bring down her character reference." McDaniel also states that Smith sided with the school principal and told parents and students that McDaniel's letter in the Star Ledger was not true. McDaniel claims that Smith's behavior was "highly unfair", "did not show good union representation" and that Smith chose not to exercise her "union power" in support of McDaniel. She concludes that "this type of behavior and unfairness" demonstrates the union's conflict of interest.

A union's duty to represent unit members consists of a responsibility to represent employees at the negotiations table and in the administration of the collective negotiations agreement. However, a union may properly determine that the merits of one employee's position are adverse to the position of the majority of employees in a unit. Trenton Bd. of Ed., P.E.R.C. No. 86-146, 12 NJPER 528 (117197 1986); CWA Local 1082 & Middlesex Cty. Bd. of Soc.


Serv., D.U.P. No. 91-6, 16 NJPER 497 (¶21218 1990). When McDaniel wrote the letter to the Star Ledger, she knowingly put herself in a position adverse to other unit members. Had disciplinary action been taken against McDaniel by the Board of Education, the union might have been obligated to represent her, but there is no allegation of discipline in the charge.

The facts alleged in McDaniel's charge do not demonstrate that the union breached its duty of fair representation towards McDaniel.

McDaniel also cites the union's unresponsiveness to incidents that occurred in December, 1990 and October, 1990. These incidents occurred well beyond the six month statute of limitations for filing an unfair practice charge with the Commission. N.J.S.A. 34:13A-5.4(c).

Therefore, I find that the Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations of this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber  
Director of Unfair Practices

DATED: July 1, 1992  
Trenton, New Jersey