

D.U.P. NO. 94-40

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

In the Matter of

OLD BRIDGE BOARD OF EDUCATION and
SEIU LOCAL 74 and OLD BRIDGE
EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-94-22

SANDRA MOHAMAD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices has refused to issue a complaint against the Old Bridge Board of Education and the Old Bridge Education Association. The Director has found that the Board has not agreed to an unlawful contract provision with SEIU Local 74 which precludes the charging party from obtaining a permanent position with the Board. The Director has also found that the charging party has failed to allege any facts which, if true, would constitute an unfair practice on the part of the Association.

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Appearances:

For the Respondent, Board of Education
Wilentz, Goldman & Spitzer, attorneys
(Steven J. Tripp, of counsel)

For the Respondent, SEIU Local 74
Manning, Raab, Dealy & Sturm, attorneys
(Ira Sturm, of counsel)

For the Respondent, Education Association
Glenn Johnson, President

For the Charging Party,
Sandra Mohamad, pro se

REFUSAL TO ISSUE COMPLAINT

On October 7, 1993, Sandra Mohamad filed unfair practice charges with the Public Employment Relations Commission ("Commission") against the Old Bridge Board of Education ("Board"), the Old Bridge Education Association ("Association") and SEIU Local 74 ("Local 74") alleging violations of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq.,

specifically section 5.4(a)(1)^{1/} with respect to the charge against the Board and section 5.4(b)(1)^{2/} with respect to the charges against the Association and Local 74. On October 18, 1993, I sent the Charging Party a letter indicating that her charges were not in compliance with N.J.A.C. 19:14-1.3 which requires a charge to contain:

...a clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed.... (Emphasis supplied).

The October 18, 1993 letter advised the Charging Party that she had failed to include the date(s) of the act(s) described in the charges. The Charging Party was given until October 29, 1993, to submit an amended unfair practice charge, together with proof of service upon the respective respondents (see N.J.A.C. 19:14-1.5), and, thereby cure the deficiencies indicated in our October 18, 1993 correspondence.

On November 4, 1993, I received amended unfair practice charges against the Board and the Association which cured the

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- 1/ This subsection prohibits public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."
- 2/ This subsection prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

deficiencies noted in our correspondence. However, I did not receive an amended unfair practice charge regarding Respondent Local 74.

In D.U.P. No. 94-33, I dismissed the Charging Party's unfair practice charge against Local 74, because the Charging Party failed to file an amended unfair practice charge which would have cured the defects contained in the charge against Local 74. For the reasons set forth below, I now dismiss Mohamad's unfair practice charges filed against the Board and the Association.

Mohamad's unfair practice charge against the Board alleges a section 5.4(a)(1) violation. Mohamad argues that a newly adopted clause in the collective agreement between Local 74 and the Board has precluded her from obtaining permanent employment as a lunch aide.

On June 23, 1993, the Board and Local 74 executed a memorandum of agreement which amended Article V, "Filling Vacancies," of the 1990-1993 collective agreement. Article V states the following:

1. Aides will be laid off and rehired on the basis of seniority in the district. When vacancies occur for aide positions, such vacancies will be posted throughout the district for five (5) days before being filled. Aides will be given preference for interviews for vacant positions based on seniority. The most senior applicant shall be tentatively awarded the position, and shall serve a thirty (30) day trial period in the new position. In the event either the employee decides to decline the position during the trial period, or the employee is found unable to sufficiently perform the job during the trial period as determined by the principal, the

employee shall be returned to his/her former position.

For approximately seven years, Mohamad has served as a substitute lunch aide at the Cheesequake and Sandburg schools. On September 2, 1993, Mohamad discovered that a lunch aide vacancy had become available at the Sandburg school. Mohamad applied for the vacancy; however, on September 30, 1993, she was advised that another employee was appointed to the position pursuant to Article V of the collective agreement. Mohamad contends that she is precluded from obtaining a permanent lunch aide position because of her status as a non-negotiations unit employee and the application of Article V.

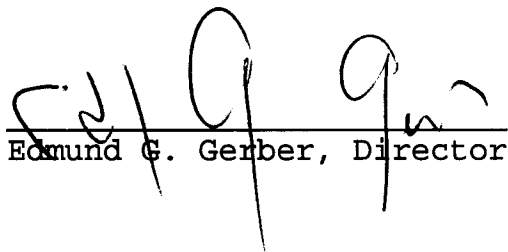
Article V of the collective agreement gives preference to unit employees who seek promotions/transfers by filling vacant positions. A public employer and public employee representative may lawfully negotiate a provision in the collective agreement which allows current unit employees to serve a trial period in such new positions. See City of Vineland, P.E.R.C. No. 91-57, 17 NJPER 58 (¶22025 1990); West Milford Bd. of Ed., P.E.R.C. No. 94-41, 19 NJPER 574 (¶24271 1993). However, as vacancies are filled by current unit employees, other vacancies will ultimately occur when those employees who are transferred leave their old position. While the job opening may not exist at the school at which the Charging Party desired to work (Sandburg), the Charging Party will eventually have the opportunity to apply for a permanent lunch aide position somewhere within the school district. Consequently, there appears to be no evidence showing that the Board has entered into a contract

improperly limiting Mohamad's opportunities for a permanent lunch aide position.

The Charging Party also alleges that the Association violated the Act. I refuse to issue a complaint against the Association because the Charging Party has failed to allege any facts which, if true, would constitute an unfair practice on the part of the Association.

Therefore, I do not believe that the Commission's complaint issuance standard has been met and refuse to issue a complaint on the allegations of this charge.^{3/} The unfair practice charges filed against the Board and the Association are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: April 13, 1994
Trenton, New Jersey