

D.U.P. No. 2009-8

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

In the Matter of

BLACK HORSE PIKE REGIONAL
SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CI-2008-020

JAMES CALLISTA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by James Callista. Callista alleges that the Black Horse Pike Regional School District terminated his employment as a substitute teacher because he attempted to organize the substitute teachers. The Director refused to issue a complaint because the District outsourced its substitute function to a private company, making Callista a private sector employee outside the jurisdiction of our Act.

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Appearances:

For the Respondent,
Wade, Long, Wood and Kennedy, attorneys
(John Wade, of counsel)

For the Charging Party,
James Callista, pro se

DECISION

On February 5, 2008, James Callista filed an unfair practice charge against Black Horse Pike Regional School District (District or Employer). Callista alleges the District fired him for his efforts to organize substitute teachers, thereby violating the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., specifically section 5.4a(1), (2) and (3)^{1/} (Act).

^{1/} These provisions prohibit 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) Dominating or
(continued...)

The District denies violating the Act, contending that it is not Callista's employer. The District asserts that it subcontracted substitute teacher staffing to Source 4 Teachers, a private employer, and that Callista remains employed by Source 4 Teachers, but has declined work assignments.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. On January 9, 2009, I wrote a letter to the parties, advising that I was not inclined to issue a complaint in this matter and setting forth the reasons for that conclusion. The parties were provided an opportunity to respond. Callista filed a reply, contending that he is an employee of the District based upon the dictionary definition of "employee" and upon his search of the Wikipedia website. I find the following facts.

Callista had been a substitute teacher in the District for 25 years, primarily in Triton Regional High School (Triton). As

1/ (...continued)
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."

it had done in previous years, the District issued re-hire forms to substitute teachers wishing to renew their employment for the 2007-2008 school year. On August 23, 2007, however, the District subcontracted its substitute teacher staffing to Source 4 Teachers, a private company. Their agreement provides in a pertinent part; "all substitute teachers provided by [Source 4 Teachers] will be treated as employees of [Source 4 Teachers], and not as employees of the District." By August 29, 2007, Source 4 Teachers had notified all of the District's substitute teachers of the change and invited them to become employees of the company. At Callista's request, the District faxed his "new hire credentials" and other documents to Source 4 Teachers on October 30, 2007.

On November 2, 2007, Source 4 Teachers offered Callista his first assignment as a substitute teacher at the District. Callista's 2007 W-2 Wage and Tax Statement identifies "Teacher Placement LLC" as his employer. It appears that "Teacher Placement LLC" and Source 4 Teachers are different names for the same company. Callista worked his first assignment with the District on December 17, 2007, at Triton. He accepted subsequent assignments there.

From October, 2007 through January, 2008, Callista contacted other District substitutes and the United Food and Commercial Workers Local 152 about organizing a unit of substitute teachers.

On January 18, 2008, Triton Vice Principal Catherine Kelleher spoke to Callista about his having used his cell phone and a District computer during a class, conduct to which the District objected. Callista replied that he used his cell phone for an emergency, assuring Kelleher it would not happen again. He also explained that he used the computer to help a student with an assignment and said that he was unaware that he was not allowed to use the computer. Kelleher asked him how he accessed the District's computer because the system is protected by a password. Callista refused to identify his password source, assuring Kelleher that he would not use the computer again.

Later the same day, Callista and Kelleher had a heated discussion in which the administrator again demanded that Callista reveal his password source. He refused. Later the same day, Callista received a phone call notifying him that his services would no longer be needed at Triton.

ANALYSIS

Callista alleges that he was employed by the District and that it terminated him for his organizing efforts. The Act's protections extend only to public employers and public employees. N.J.S.A. 34:13A-3; 34:13A-5.3. The District is not Callista's employer, as evidenced by his W-2 form. The only indication that Callista is a District employee is a 2007-2008 District substitute re-hire form that was neither completed nor filed with

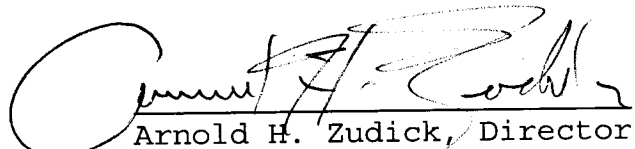
the District. Records indicate that Callista was and continues to be an employee of Source 4 Teachers. Source 4 Teachers has contacted Callista regularly since the January 18 incident to offer him other substitute work assignments. Callista has refused all of them.

Source 4 Teachers is a private employer, making Callista a private sector employee outside the jurisdiction of our Act. N.J.S.A. 34:13A-3(d) and N.J.A.C. 19:14-1.1. I note that Callista alleged no fact(s) indicating that the District knew of his organizing efforts.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Arnold H. Zudick, Director

DATED: February 20, 2009
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by March 5, 2009.