

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

In the Matter of

EDISON TOWNSHIP BOARD OF  
EDUCATION,

Respondent - Public Employer,

-and-

EDISON TOWNSHIP EDUCATION  
ASSOCIATION,

Docket Nos. CI-2008-022  
and CI-2008-023

Respondent - Labor Organization,

-and-

CAROL PARENTE ZIZNEWSKI,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed by Carol Ziznewski. Ziznewski alleges that the Edison Township Board of Education unlawfully withheld her pay increment. She further alleges that the Edison Township Education Association violated the Act when it failed to file a grievance, an appeal to the Commissioner of Education, and an unfair practice charge contesting the increment withholding.

The Director found that Ziznewski's charge against the Board was untimely, and that no facts suggest she was prevented from filing a timely charge. The Director also found that Ziznewski did not allege that she engaged in any protected activity in advance of the Board's action, indicating that its motive could have been retaliatory or that it tended to interfere with any of her protected rights. The Director further found that the facts do not suggest that the Association's choice of forum to contest Ziznewski's increment withholding was arbitrary, discriminatory, or in bad faith.

D.U.P. No. 2009-10

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Appearances:

For the Respondent - Public Employer,  
Wolff, Helies, Duggan, Spaeth & Lucas, P.A., attorneys  
(Peter H. Spaeth, of counsel)

For the Respondent - Labor Organization,  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,  
attorneys  
(Colin Lynch, of counsel)

For the Charging Party,  
Carol Parente Ziznewski, pro se

REFUSAL TO ISSUE COMPLAINT

On February 13, 2008, Carol Parente Ziznewski (Ziznewski) filed two unfair practice charges, both amended on March 11, 2008, one against her employer, Edison Township Board of Education (Docket No. CI-2008-023) (Board), and one charge

against her majority representative, Edison Township Education Association (Docket No. CI-2008-022) (Association). The charge, as amended, against the Board alleges that it unlawfully withheld Ziznewski's pay increment on July 23, 2007, violating sections 5.4a(1), (3), and (4)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

Ziznewski alleges in her other charge that the Association violated 5.4b(1)<sup>2/</sup> of the Act when it failed to file a grievance, an appeal to the Commissioner of Education, and an unfair practice charge contesting the increment withholding.

The Association filed a reply, denying that it acted unlawfully, writing that it challenged Ziznewski's increment withholding by filing a formal grievance and seeking arbitration on November 1, 2007.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may

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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. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

2/ This provision prohibits employee organizations, their representatives or agents from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

constitute an unfair practice within the meaning of the Act and formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. 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. In correspondence dated April 8, 2009, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond.

On April 20, 2009, Ziznewski filed a letter advising that she had not been provided with the documents submitted by the Board and the Association upon which I based my tentative conclusion. After receiving the documents, Ziznewski filed another reply on May 17, 2009, which did not contest my earlier factual findings. Based upon the following, I find that the complaint issuance standard has not been met.

Ziznewski is employed as a tenured teacher by the Board. On July 12, 2007, Superintendent Carol A. Toth issued a letter to Ziznewski, advising that she would recommend to the Board that her employment and adjustment increments for the 2007-2008 school year should be withheld. The letter advised Ziznewski that she had ignored administrative directives by 1) continuing to act inappropriately and unprofessionally in the workplace; 2) failing

to improve her demeanor with respect to the manner in which she interacts with co-workers; 3) failing to adhere to Board procedures regarding placement for students in ESL classes; and 4) engaging in inappropriate communications with a parent, which conveyed inaccurate information and interfered with a student's placement in the ESL program.

The Superintendent's criticisms of Ziznewski were the result of two incidents.

An investigation had been conducted by Assistant Superintendent Maryann Banks, prompted by complaints from three of Ziznewski's co-workers that the teacher harassed, intimidated and bullied them. Assistant Superintendent Banks agreed with the complainants, and wrote a letter to Ziznewski on July 3, 2007, advising her of the findings. Banks also wrote that she will request Superintendent Toth to recommend to the Board that it withhold her increments for the 2007-2008 school year.

The Board also wrote of another incident regarding the screening of a student eligible for the Board's ESL program. On July 6, 2007, Assistant Superintendent Rose Traficante issued Ziznewski a memorandum reprimanding her for interfering in the assessment process and undermining Board leadership by making disparaging remarks to the student's parent about the ESL program and an ESL teacher. Traficante characterized Ziznewski's actions as insubordinate because they occurred a few months after a November 21, 2006 meeting in which the Board reviewed its ESL

procedures in detail with Ziznewski and advised her of its concerns about her disregard for those procedures. Finally, Traficante, like Banks, advised Ziznewski that she would request Superintendent Toth to recommend to the Board that it withhold her increments for the 2007-2008 school year.

On July 24, 2007, the Board wrote to Ziznewski, advising her that it adopted the Superintendent's recommendation to withhold her pay increments effective the preceding day. The Association filed a formal grievance challenging Ziznewski's increment withholding which was denied by the Board at each step of the grievance procedure. The Association concluded that the increment withholding was primarily disciplinary and that its best chance to prevail on the grievance was to seek arbitration. The Association filed for arbitration on November 1, 2007.<sup>3/</sup>

#### ANALYSIS

The Act includes a 6-month statute of limitations for unfair practice charges in order to prevent the litigation of stale claims. N.J.S.A. 34:13A-5.4(c) provides:

. . . 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

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<sup>3/</sup> The arbitration is pending the conclusion of hearings on tenure charges preferred against Ziznewski by the Board on May 28, 2008. Ziznewski has not taught since the Board suspended her with pay on April 15, 2008. On May 15, 2008, Ziznewski's status was changed to suspended without pay.

event the six month period shall be computed from the day he was no longer so prevented.

In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), our Supreme Court explained that the statute of limitations was intended to stimulate litigants to prevent the litigation of stale claims, and cautioned that it would consider the circumstances of individual cases. Id. at 337-338. The Court noted that it would look to equitable considerations in deciding whether a charging party slept on its rights.

Ziznewski's charge, as amended, alleges that the Board withheld her increment on July 23, 2007. She learned of its action a day or two later. Ziznewski did not file her charge until February 13, 2008, more than six months after July 25, 2007. No facts suggest that Ziznewski was prevented from filing a timely charge. Nor does Ziznewski allege that she engaged in any protected activity in advance of the Board's action, indicating that its motive could have been retaliatory or that it tended to interfere with any of her protected rights.

Accordingly, the 5.4a(1), (3) and (4) allegations must be dismissed.

Section 5.3 of the Act empowers an employee representative to represent employees in the negotiations and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly in negotiations and contract administration. The standards in the private sector for

measuring a union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171 (1967). Under Vaca, a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the negotiations unit is arbitrary, discriminatory, or in bad faith. Id. at 191. That standard has been adopted in the public sector. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); see also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

Ziznewski alleges that the Association breached its duty of fair representation by failing to challenge her increment withholding in three forums - in arbitration, at the New Jersey State Board of Education, and at our Commission.

A union is allowed a wide range of reasonableness in servicing its members. An employee organization must evaluate an employee's request to arbitrate or otherwise appeal discipline on the merits and decide, in good faith, whether it believes the employee's claim has merit. See Ford Motor Company v. Huffman, 345 U.S. 330, 337-338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953); D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74 (1990); Carteret Ed. Ass'n. (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390, 391 (¶28177 1997); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Trenton Bd. of



Ed. (Salter), P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986); Essex-Union Joint Meeting (McNamara), D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991).

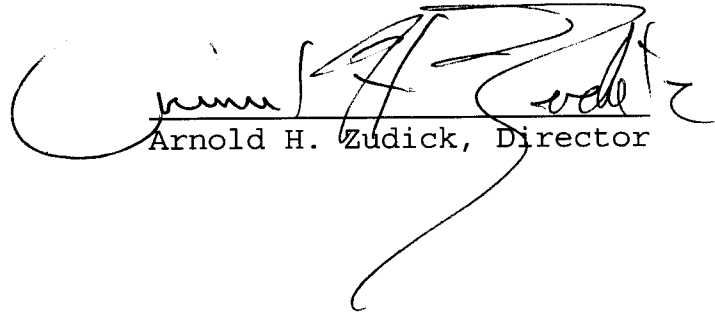
N.J.S.A. 34:13A-26 et seq., allows all increment withholdings of teaching staff members to be submitted to binding arbitration except those based predominately on the evaluation of teaching performance. Edison Tp. Bd. of Ed. v. Edison Tp. Principals and Supervisors Ass'n, 304 N.J. Super. 459 (App. Div. 1997), aff'g P.E.R.C. No. 97-40, 22 NJPER 390 (¶27211 1996). If the reason for a withholding is related predominately to the evaluation of teaching performance, any appeal shall be filed with the Commissioner of Education. N.J.S.A. 34:13A-27d.

The facts do not suggest that the Association's choice of forum to contest Ziznewski's increment withholding was arbitrary, discriminatory, or in bad faith. It appears that the filing for arbitration was prompted by circumstances set forth in recommendations by two assistant superintendents, resulting in the Superintendent's recommendation to the Board. The Superintendent's rationale was reported to Ziznewski on July 12, 2007. Even if the Association might have filed an appeal with the Commissioner of Education, its omission does not indicate conduct which would violate the duty of fair representation owed to Ziznewski. Nor does it appear to me that the Board's withholding of Ziznewski's increment implicates our Commission's jurisdiction. Accordingly, I dismiss the 5.4b(1) allegation.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: May 20, 2009  
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to  
N.J.A.C. 19:14-2.3.

Any appeal is due by June 1, 2009.