

D.U.P. No. 2011-12

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

In the Matter of

WINSLOW TOWNSHIP EDUCATION  
ASSOCIATION AND NEW JERSEY  
EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-2011-026

JOAN BROWN AND BERNADETTE STETTLER,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Joan Brown and Bernadette Stettler against the Winslow Township Education Association (WTEA) and the New Jersey Education Association. The charge alleged that the WTEA violated 5.4b(1), (2), (3), and (5) of the New Jersey Employer-Employee Relations Act when it failed to advance a grievance contesting the Board's plans to privatize the teacher assistant positions beyond Level II of the parties negotiated grievance procedure.

The Director found that Brown and Stettler did not allege any facts indicating that the WTEA's decision not to advance the grievance was arbitrary, discriminatory, or in bad faith. Moreover, she found no facts which indicated that the grievance's failure to identify the provision of the parties' collective negotiations agreement which sets forth privatization procedures had a substantive effect on the Board's decision or that citation of the provision would have resulted in a decision reversing the subcontracting of services. The Director found that even had the WTEA grievance contested the Board's failure to comply with the privatization procedure and the WTEA advanced it to arbitration, the charging parties' desired remedy - the restoration of the teacher assistants as Board employees - would not have been available.

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

In the Matter of

WINSLOW TOWNSHIP EDUCATION  
ASSOCIATION AND NEW JERSEY  
EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-2011-026

JOAN BROWN AND BERNADETTE STETTLER,

Charging Parties.

Appearances:

For the Respondents,  
Selikoff and Cohen, P.A.  
(Steven R. Cohen, of counsel)

For the Charging Parties,  
Joan Brown and Bernadette Stettler, pro se

REFUSAL TO ISSUE COMPLAINT

On December 28, 2010, Joan Brown (Brown) and Bernadette Stettler (Stettler), teacher assistants formerly employed by the Winslow Township Board of Education (Board), filed an unfair practice charge against the Winslow Township Education Association (WTEA) and the New Jersey Education Association<sup>1/</sup>.

---

<sup>1/</sup> The parties to the most recent collective negotiations agreement governing the terms and conditions of employment of the teacher assistants are the Winslow Township Board of Education and the Winslow Township Education Association. Accordingly, it appears that the Winslow Township Education Association, and not the New Jersey Education Association, was Brown and Stettler's majority representative.

The charge alleges that the WTEA violated 5.4b(1), (2), (3), and (5)<sup>2/</sup> of the New Jersey Employer-Employee Relations Act (Act) when it failed to advance a grievance contesting the Board's plans to privatize the teacher assistant positions beyond Level II of the parties' negotiated grievance procedure.

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 June 2, 2011, I wrote to the parties advising that I was not inclined to issue a complaint in this matter and set forth the reasons for that conclusion. The parties were provided an opportunity to respond. On June 15, 2011 Brown and Stettler filed a letter disputing my tentative finding that the WTEA had filed a contractual grievance

---

<sup>2/</sup> These provisions prohibit 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; (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; (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; (5) Violating any of the rules and regulations established by the commission."

contesting the Board's plan to subcontract teacher assistant duties (because they never received a copy of that grievance). On June 14, 2011, a Commission staff agent emailed Brown and Stettler advising that they had been provided all of the documents filed by the Association in response to the charge, including a copy of the Board's response to the WTEA grievance. I infer that the Board's written denial response sufficiently demonstrates that a grievance was filed. Under all the circumstances, I find that the complaint issuance standard has not been met. I find the following facts.

The WTEA is the majority representative of a broad-based negotiations unit comprised of professional and non-professional employees of the Board, including teacher assistants. The most recent collective negotiations agreement extends from July 1, 2007 through June 30, 2010.

In the spring of 2010, the Board announced its intention to subcontract the teacher assistant duties and to lay off all 70 teacher assistants. Article XII subsection F of the parties' agreement requires the Board to follow certain procedures before "privatizing" unit employees. Subsection F(2) provides in a pertinent part:

The Board agrees to form a joint Review Committee composed of representatives of Administration and the Association representing the employee category. This committee shall discuss the matter of privatization fully, including the proposed

implementation plan. The Board agrees that this joint committee shall be formed no later than ninety (90) days prior to the end of the school year in which the Board has taken formal action . . .

The Board did not comply with this procedure before subcontracting the teacher assistant positions.

Article II Subsection C of the parties' agreement sets forth the steps of the parties' grievance procedure. They are: Level I - informal discussion; Level II - written response; Level III - appeal to superintendent; Level IV - board hearing; and Level V - request for arbitration.

The WTEA filed a grievance contesting the Board's plans to privatize the teacher assistant positions. The grievance did not refer to the Board's failure to comply with Article XII, subsection F. The grievance was denied by Interim Director of Human Resources Lorene W. Moore at Level II. The WTEA did not advance the grievance.

On June 28, 2010, the WTEA held a meeting for the teacher assistants regarding the Board's privatization plans. At the meeting, counsel for the WTEA advised the teacher assistants that the Board has a managerial prerogative to subcontract the services they provide for reasons of economy. The teacher assistants were given the opportunity to ask questions of WTEA counsel regarding their impending layoffs.

The Board implemented its plan to subcontract the services of the teacher assistants, beginning with the 2010-2011 school year.

#### ANALYSIS

Section 5.3 of the Act empowers an employee representative to represent employees in the negotiation and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly. A violation of that duty occurs "only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). The Commission and the New Jersey courts have adopted this standard. Saginario v. Attorney General, 87 N.J. 480 (1981); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Fair Lawn Bd. of Ed. (Solomons), P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983). A wide range of reasonableness must be allowed a majority representative in servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. PBA Local 187, P.E.R.C. No. 2005-78, 31 NJPER 173 (¶70 2005), citing Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953). Thus, the duty of fair representation does not require a union to press non-meritorious grievances. Carteret Ed. Ass'n (Radwan),

P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987).

Brown and Stettler have not alleged any facts indicating that the WTEA's decision not to advance the grievance contesting the Board's plans to privatize the teacher assistant positions beyond Level II of the parties' grievance procedure was arbitrary, discriminatory, or in bad faith. No facts indicate that the grievance's failure to identify Article XII, subsection F(2) of the agreement had a substantive effect on the Board's decision or that citation of the provision would have resulted in a decision reversing the subcontracting of services. Moreover, proof of mere negligence, poor judgment, or even ineptitude, standing alone does not constitute a breach of the duty of fair representation. See, e.g., Printing and Graphic Communication Local 4, 249 NLRB No. 23, 104 LRRM 1050 (1980).

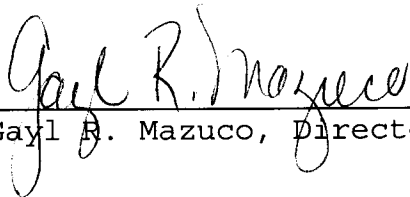
In Local 195, IFPTE v. State, 88 N.J. 393 (1982), our Supreme Court held that subcontracting decisions are not mandatorily negotiable. Following Local 195, the Commission has prohibited negotiations or arbitration over decisions to subcontract work to private sector companies. See, e.g., Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 2004-35, 29 NJPER 541 (¶173 2003); Ridgewood Bd. of Ed., P.E.R.C. No. 93-81, 19 NJPER 208 (¶24098 1993), aff'd 20 NJPER 410 (¶25208 App. Div.

1994), certif. den. 137 N.J. 312 (1994); Borough of Pompton Lakes, P.E.R.C. No. 90-68, 16 NJPER 134 (¶21052 1990); Lacey Tp., P.E.R.C. No. 90-59, 16 NJPER 43 (¶21019 1989). Even if the WTEA grievance contested the Board's failure to comply with the privatization procedure and the WTEA advanced it to arbitration, the charging parties' desired remedy - the restoration of the teacher assistants as Board employees - would not have been available.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
\_\_\_\_\_  
Gayl R. Mazuco, Director

DATED: June 30, 2011  
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 July 11, 2011.