

D.U.P. NO. 2013-1

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

In the Matter of

NEWARK PRESCHOOL COUNCIL, INC.
and SEIU LOCAL 617,

Respondents,

-and-

Docket No. CI-2012-024

PAMELA A. MUHAMMAD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint and dismisses an unfair practice charge filed against the Newark Preschool Council, Inc. and SEIU Local 617. The Director finds based upon factual submissions presented by the parties that there is no public employer-employee relationship present upon which the Commission may issue an unfair practice complaint. The Newark Preschool Council is not a public employer, instead it is a non-profit corporation that exercises substantial control over labor relations affecting its employees.

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Appearances:

For the Respondent - SEIU Local 617,
Oxford Cohen, P.C.
(Arnold Shep Cohen, of counsel)

For the Charging Party,
Daniel S. Smith, attorney

DECISION

On December 14, 2011 and March 13, 2012, Pamela Muhammad ("Muhammad") filed an unfair practice charge and amended charge with the Public Employment Relations Commission (the "Commission") against Newark PreSchool Council, Inc. ("NPC") and SEIU Local 617 ("SEIU"). The charge, as amended, alleges that NPC and SEIU were engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically sections 5.4(a)(1) and (3), (b) (1), (3), and (5).

SEIU denies violating the Act, and contends that a complaint should not issue in the instant matter inasmuch as Muhammad's employer, the NPC is not a public employer within the meaning of the Act, and therefore the Commission lacks jurisdiction to consider the charge.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute unfair practices on the part of the Respondent.

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 will decline to issue a complaint.

N.J.A.C. 19:14-2.3. An administrative investigation into the allegations of the charge has been conducted pursuant to N.J.A.C. 19:14-1.6. The parties submitted statements of position on April 17, 2012 and April 23, 2012.^{1/} The disposition of the charge is properly based upon our administrative investigation since there are no substantial, material facts in dispute which would warrant convening an evidentiary hearing. Based upon my authority and the administrative investigation, I find the following facts.

Muhammad was employed by NPC, a not-for-profit corporation that contracts with the Newark Public Schools ("NPS") to provide

^{1/} The State Operated School District of the City of Newark also submitted a position statement in this case. They deny violating the Act, contending that they are not Muhammad's employer.

pre-school educational services to children who reside in the City of Newark. NPC is funded through a federal grant to the NPS and the Department of Human Services.

Initially, Muhammad was working with a provisional certification issued by the New Jersey Department of Education to teach pre-K students. She was in a one-year program to obtain her standard (permanent) certification monitored by NPS, which oversees the training. Muhammad failed this program and did not receive the standard certification. It is NPC's policy to terminate the employment of any teacher who is unable to obtain a standard certification. Consequently, Muhammad was terminated from her employment with NPC.

SEIU represented Muhammad in an arbitration hearing against NPC following her termination which resulted in a settlement agreement.^{2/} The agreement provided that if NPS sanctioned Muhammad's continued employment, she could return to NPC as a teacher on September 1, 2011, and apply for a one year provisional certification. However, NPS rejected her application and thus, she was not eligible to return to NPC as a teacher. SEIU submits that once NPS chose not to rehire her, they could not further assist Muhammad.

^{2/} NPS was not a party to this arbitration.

ANALYSIS

The New Jersey Public Employer-Employee Relations Act at N.J.S.A. 34:13A-3(c) provides as follows:

The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This terms shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any authority, commission or board, or any branch or agency of the public service.

Although NPS is a public employer pursuant to the above, NPS was not Muhammad's employer; she was employed by NPC. NPC is a private, independent entity with its own administrative structure, separate from the administration of the NPS. NPC is a non-profit corporation funded by a grant through the federal government, the NPS and the Department of Human Services. While the services offered by NPC are provided for the public, they do not make NPC a branch or agency of the public service. The Director of Representation has declined jurisdiction over private non-profit corporations providing social services pursuant to a governmental contract. Bergen Cty. CETA, Inc., D.R. No. 82-2, 7 NJPER 422 (¶12187 1981); Bonnie Bray Child Care Counselors

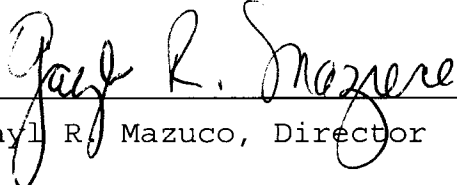
Ass'n, D.U.P. No. 80-7, 5 NJPER 457 (¶10231 1979); Newark Housing Development and Rehabilitation Corp., D.R. No. 80-2, 5 NJPER 328 (¶10175 1979); Cape May Cty. Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977). A non-profit corporation that controls such employment conditions as hiring, assigning, scheduling, supervising, evaluating, promoting, transferring, disciplining, and discharging employees is a private employer instead of a public employer under the Act. Ass'n of Retarded Citizens, Hudson Cty. Unit, P.E.R.C. No. 94-57, 19 NJPER 593 (¶24287 1993). NPC is not a public employer simply because it is funded by the government.

Consequently, as NPC is not a public employer within the meaning of N.J.S.A. 34:13A-3(c), the Commission is without jurisdiction to consider the merits of the unfair practice charge. Accordingly, this matter must be dismissed.

ORDER

The unfair practice charge is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Gayl R. Mazuco, Director

DATED: August 23, 2012

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 August 31, 2012.