

D.U.P. NO. 2016-004

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

In the Matter of

PLAINFIELD BOARD OF EDUCATION,

RESPONDENT,

-and-

Docket No. CO-2014-167

PLAINFIELD EDUCATION ASSOCIATION,

CHARGING PARTY.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Plainfield Education Association alleging that a unit employee was denied union representation at meetings with his supervisor. The Director found that the unit employee had union representation at the first meeting and the second meeting was not an investigatory interview that could lead to discipline as required under Weingarten. Instead, that meeting was intended to discuss work duties and responsibilities. Further, there were no facts alleged to indicate that the unit employee reasonably believed that adverse consequences/discipline might result from either meeting.

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Appearances:

For the RESPONDENT,
Law Office of Francesco Taddeo, LLC
(Francesco Taddeo, of counsel)

For the CHARGING PARTY,
Oxfeld Cohen
(Sanford R. Oxfeld, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 24, 2014, the Plainfield Education Association (Association) filed an unfair practice charge against the Plainfield Board of Education (Board). The charge alleges that on December 19, 2013, the Board violated section 5.4a(1) through (7) of the New Jersey Public Employer- Employee Relations Act, N.J.S.A. 34:13A-5.3 et seq.^{1/} by unlawfully refusing Association

^{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 interfering with the formation, existence, or administration of any employee organization; (3) Discriminating in regard (continued...)

building representative Michael Washington's request for union representation in violation of N.L.R.B. v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975).

The Respondent claims that the Association fails to present a Weingarten case and requests that the charge be dismissed.

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.

On September 30, 2015, I issued a letter tentatively dismissing the charge and inviting responses. On October 22, 2015, the Association filed a sworn statement of Michael Washington. This statement included facts not set forth within

1/ (...continued)
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; and, (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and condition of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement;(7) Violating any of the rules and regulations established by the commission."

the unfair practice charge, however, the Association did not file an amended charge. On November 17, 2015, the Board filed an opposition to the Association's submission.

I find the following facts.

In fall 2013, teacher and unit employee Michael Washington (Washington) was removed from all teaching assignments pending an investigation of an unrelated affirmative action complaint. He remained in "full pay status" and reported to his assigned school each work day. On December 19, 2013, former Assistant Superintendent Margaret Morales (Morales) conducted two impromptu meetings with Washington, one in the morning and one in the afternoon. The charge does not specify why these meetings were called and what was discussed in them, though the charge alleges that both meetings were "disciplinary interviews." According to the Association, Washington requested that an Association representative be present at each meeting and the requests were denied without explanation. Notwithstanding the alleged denials, Association President Kathy Cardona (Cardona) attended the morning meeting with Washington. Cardona was not available to attend the afternoon meeting.

According to Washington's sworn statement, the morning meeting was prompted by Washington's concerns regarding the instruction of his students while he was absent. The afternoon meeting was initiated by Morales wherein she gave Washington "a

box with several teacher manuals, asked [him] to sign a sheet of paper indicating acceptance, informed [him] that [he] had all of the information needed to calculate grades and told [him] that she expected that [he] would now input grades."

Nothing alleged or sworn suggests that Morales was conducting an investigatory interview based on Washington's conduct. There are no allegations made that Washington received discipline as a result of either meeting or both meetings.

ANALYSIS

An employee has a right to union representation at an investigatory interview that the employee reasonably believes could lead to discipline. NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975), adopted East Brunswick Bd. of Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in part. part NJPER Supp.2d 78 (¶61 App. Div. 1980). The Supreme Court in Weingarten wrote that:

The union representative . . . is safeguarding not only the particular employee's interest, but also the interests of the entire bargaining unit by exercising vigilance to make certain that the employer does not initiate or continue a practice of imposing punishment unjustly. [88 LRRM at 2692]

To establish a violation of an employee's Weingarten rights, the charging party must show that the meeting was investigatory; that the employee reasonably believed that discipline might result; that the employee requested representation; and that the employer denied

the request and proceeded with the meeting. State of New Jersey (Division of State Police), P.E.R.C. No. 93-20, 18 NJPER 471 (¶23212 1992). The reasonableness of the employee's belief that discipline may result from the interview is measured by objective standards under the circumstances of each case. Dover Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984); State of New Jersey/Kupersmit, D.U.P. No. 91-2, 16 NJPER 421 (¶21177 1990). The charging party bears the burden of proving that an employee is entitled to a Weingarten representative.

The Association has not alleged facts suggesting a possible violation of Washington's Weingarten rights. The Association's charge omits facts regarding the stated and/or actual purpose of the meetings with Morales. Washington's sworn statement clarifies that the morning meeting was held due to Washington's concerns regarding the instruction of his students while he was absent. Although it is alleged that Morales denied Washington's request for union representation, Association President Cardona attended the morning meeting. The facts do not suggest any other purpose for Cardona's presence other than acting as Washington's representative.

Washington submits that the afternoon meeting was prompted by Morales whereby she gave him several teacher manuals, informed him that he had all of the information needed to calculate grades and then requested that he input his students' grades. The meeting's

purpose was to discuss work duties and responsibilities. A Weingarten right does not attach to run-of-the-mill shop-floor conversations--for example, giving instructions, training employees or correcting techniques. State of New Jersey, D.U.P. No. 2008-1, 33 NJPER 289 (¶110 2007). Further, no allegations in the charge or in Washington's statement suggests that these meetings were investigatory interviews from which one could reasonably infer a possibility of discipline. No allegation suggests that Washington was asked questions that would lead a reasonable teacher in Washington's position to believe that he or she would be subject to discipline. Further, the Association does not allege facts indicating that Washington reasonably believed that adverse consequences/discipline might result from the meetings.

For these reasons, I find that the Charging Party has not set forth facts sufficient to warrant the issuance of a Complaint on allegations that the Board unlawfully denied his request for union representation in violation of 5.4a(1).

I also dismiss the Association's a(7) allegation. There are no allegations or facts to support a finding that this subsection was violated and the Association has not specified which Commission rule or regulation was allegedly violated. Burlington Tp. Bd. of Ed., D.U.P. No. 97-31, 23 NJPER 152 (¶ 28073 1997). Finally, the Association asserts no facts supporting their 5.4a(2), (3), (4), (5) and (6) allegations, and as such, they also are dismissed.

Accordingly, I do not believe the Commission's complaint issuance standard has been met and I decline to issue a complaint on the allegations in the charge. N.J.A.C. 19:14-2.3.

ORDER

The unfair practice charge is dismissed.

/s/Gayl R. Mazuco
Gayl R. Mazuco
Director of Unfair Practices

Dated: March 7, 2016
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 March 21, 2016.