

D.U.P. NO. 99-19

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

In the Matter of

SECAUCUS PUBLIC EMPLOYEES ASSOCIATION,

Respondent,

-and-

Docket No. CI-99-41

GEORGE HEFLICH,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge brought by George Heflich, a former employee of the Town of Secaucus. Heflich alleged that the Secaucus Public Employees Association committed an unfair practice when it refused to reimburse his legal fees for a dispute with the Town over the elimination of his position as fire safety officer. The Director found that the Association had rejected Heflich's claim for legal fees well beyond the six-month statute of limitations set forth in the Act and that there is no evidence that Heflich was prevented from filing his charge in a timely manner. The subsequent settlement of Heflich's Superior Court litigation does not trigger a new operative event extending the six-month statute of limitations.

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Appearances:

For the Respondent,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

For the Charging Party,
Michael J. Reimer, attorney

REFUSAL TO ISSUE COMPLAINT

On December 18, 1998, George Heflich, a former employee of the Town of Secaucus (Town), filed an unfair practice charge alleging that his employee representative Secaucus Public Employees Association (SPEA) violated provision 5.4b(1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to reimburse his legal fees for a dispute with the Town over the elimination of his position as fire safety officer.

^{1/} This provision prohibits 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."

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. In correspondence dated May 19, 1999, 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. Neither party filed a response. Based upon the following, I find that the Complaint issuance standard has not been met.

SPEA and the Town are parties to a collective negotiations agreement effective from January 1, 1993 through December 31, 1996. SPEA represents the Town's department heads including the title uniform fire safety officer, held by Heflich prior to his retirement.

In the fall of 1997, the Town Administrator initiated disciplinary charges against Heflich. SPEA President Charles Schumacher referred Heflich to SPEA's attorney, Joseph Licata. On October 28, 1997, Heflich met with Licata for the purpose of evaluating any defenses to the disciplinary charges. SPEA had no prior experience with disciplinary matters and had no established policy in regard to paying attorney's fees or providing representation to its members in disciplinary cases. However, in

addition to the two-hour consultation with Licata, SPEA provided Heflich with \$720.00 for expenses he might incur in defending himself at the departmental disciplinary hearing.^{2/} Heflich signed a release of SPEA based on the provision of these legal fees and retained his own counsel.

Subsequently, the Town eliminated the position of uniform fire safety officer. Rather than seek representation from SPEA concerning the elimination of the position, Heflich retained an attorney to represent him in Superior Court litigation against the Town. On January 26, 1998, Heflich's attorney informed SPEA of her representation and, citing Article XIV of the parties' collective agreement, contended that SPEA was responsible for all legal fees arising from such representation.

Article XIV of SPEA's most recent collective agreement is entitled Welfare and Pension Benefits. It provides at subsection H:

Legal representation shall be provided to employees as proscribed in New Jersey Statutes in the event of job-related litigation.

On February 2, 1998, SPEA, through its attorney Joseph Licata, rejected Heflich's claim for legal fees. Licata stated that under the collective agreement, the legal representation referenced by Article XIV(H) pertains to representation provided by the Town as required by statute, not to legal representation provided by SPEA for litigation brought by an employee against the Town.

^{2/} The \$720.00 was arrived at based upon an estimate of the hourly rate of SPEA's attorney times the number of hours SPEA calculated would be incurred in providing a defense at the departmental hearing.

The Town and Heflich entered into a settlement of the Superior Court litigation. The settlement resolved all matters pending against the Town as well as the outstanding disciplinary charges against Heflich. However, the settlement did not provide for reimbursement of attorney's fees. On August 28, 1998, Heflich's attorney again renewed the request with SEPA for attorney's fees. SPEA again rejected Heflich's claim and reiterated its position as stated in Licata's February 2, 1998 letter.

ANALYSIS

This charge has not been filed within the statutory time limitations. N.J.S.A. 34:13A-5.4(c) provides:

...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

See State of New Jersey, D.U.P. No. 93-18, 19 NJPER 75 (¶24034 1992).

Heflich filed his charge on December 18, 1998. The basis for his charge against SPEA is that it rejected his claim for reimbursement for legal fees. SPEA's refusal to pay that claim was expressed to Heflich in its February 2, 1998 letter. That date is beyond the six-month statute of limitations as set forth in N.J.S.A. 34:13A-5.4(c). There is no evidence or allegation that Heflich was prevented from filing his charge in a timely manner. Moreover, the fact that Heflich renewed his request for legal fee reimbursement after the settlement of his Superior Court litigation does not

trigger a new operative event which extends the six-month statute of limitations.

Even if Heflich had filed his charge in a timely manner, the refusal to provide reimbursement for legal fees does not establish that the union violated its duty of fair representation, namely that its conduct toward Heflich was "arbitrary, discriminatory or in bad faith." OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967). The Commission has held that the determination of whether to provide legal assistance to unit employees is an internal union matter that is not within the Commission's jurisdiction. Bergen Comm. Coll. Fac. Assn., P.E.R.C. No. 84-117, 10 NJPER 262 (¶15127 1984). See also PBA Local 105 (Giordano), D.U.P. No. 90-1, 15 NJPER 457 (¶20186 1989).^{3/}

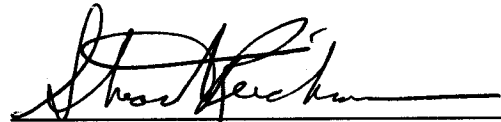
SPEA indicated that it had no policy in regard to providing either legal representation or payment for legal fees since it had not been confronted with the issue prior to Heflich's request, and it did provide him with payment for legal fees for his departmental

^{3/} Heflich also suggested at the exploratory conference that SPEA discriminated against him in rejecting his claim for legal fees because he had run for Town Council against the Mayor and certain Council members. However, there is nothing in the charge alleging facts to support this claim. Therefore, I do not consider it in determining whether to issue a Complaint in this matter.

disciplinary hearing. Thus, SPEA cannot be said to have discriminated against him or to have acted arbitrarily or in bad faith in violation of its duty of fair representation.@

Accordingly, I find that the Commission's complaint issuance standard has not been met. The unfair practice charge is dismissed.^{4/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: June 7, 1999
Trenton, New Jersey