

D.U.P. NO. 99-4

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

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-98-92

GWENDOLYN EILEEN SMITH,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses in part an unfair practice brought by Gwendolyn Eileen Smith, an individual. Smith alleges that the Irvington Board of Education committed an unfair practice when it discontinued her services as a substitute teacher after she complained that school aides were exceeding their authority in the classrooms and after she attempted to organize the substitute teachers. Smith also asserts that the Board discriminated against her for filing an EEOC complaint in 1994 and for her challenge to the Board's decision not to grant her teacher certification. The Director dismisses that part of the charge which relates to discrimination based on the filing of an EEOC complaint and based on a challenge to the teacher certification decision as these do not meet the Bridgewater standards.

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Appearances:

For the Respondent,
Hunt, Hamlin & Ridley, attorneys
(Raymond L. Hamlin, of counsel)

For the Charging Party,
Gwendolyn E. Smith, pro se

DECISION

On June 5 and June 25, 1998, Gwendolyn Smith filed an unfair practice charge alleging that the Irvington Board of Education violated New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 (Act) when it discontinued her services as a substitute teacher^{1/} because she complained on several occasions

^{1/} Although not specifically pled, the narrative of the charge alleges a violation of 5.4a(1) and (3) of the Act. 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."

that school aides were exceeding their authority in the classrooms and doing the work of teachers, and further because she attempted to unite substitute teachers to form a union. Smith also asserts that the Board discriminated against her because she filed an EEOC complaint in 1994.^{2/}

The Board denies that Smith was involved in organizing the substitute teachers and that, in any event, the Board had no knowledge of any such activity. The Board alleges that its decision not to use Smith as a substitute was based on her poor performance and on specific improper conduct.

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.

Gwendolyn Smith has been employed as a substitute teacher by the Irvington Board of Education since 1990. Substitute teachers are not represented for purposes of collective negotiations.

Smith asserts that her "problems" with the Board really began when she filed the EEOC complaint. Smith further asserts that

^{2/} Smith also complains generally that the Board is slow to hire black teachers; it is unclear whether this complaint was a part of the 1994 EEOC filing.

the teacher supervising her 1993 internship with the Board did not pass her, and she was thus denied teacher certification. Although Smith appealed unsuccessfully to the Commissioner of Education, she claims that the Board had improperly denied her a hearing on the issue of her failed internship.

Smith claims that she tried to unite substitute teachers in an effort to have them join a union. Smith alleges that the Board discriminated against her when on May 12, 1998, a Board representative informed her that she would no longer receive any substitute teacher assignments.

ANALYSIS

The standards for proving a 5.4(a)(3) violation are set forth in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). No violation will be found unless the charging party proves, that protected conduct was a substantial or motivating factor in the adverse action.

Here, the "protected conduct" set forth as the basis for Smith's discriminatory termination are the filing of an EEOC complaint in 1994, the request for a hearing on Smith's failure to get teacher certification, Smith's complaint about the school aides exceeding their authority in the classroom and Smith's activities in organizing the substitute teachers. The filing of an EEOC complaint and Smith's challenge of her failure to get teacher certification may be activities protected under another statutory scheme but they

are not protected activities as contemplated under our Act. New Jersey Network, D.U.P. No. 98-32, 24 NJPER 245 (¶29117 1998). Smith has not alleged a nexus between her EEOC and Department of Education complaints and the exercise of protected activity within the meaning of the Act. Therefore, even if Smith could prove that these activities were the motivating factors in the adverse personnel action they could not constitute a violation of the Act.

Based on the foregoing, I dismiss that part of the charge which alleges that the discrimination relates to the filing of the EEOC complaint and any related allegations of racial discrimination. I also dismiss Smith's allegations related to her appeal of the decision regarding her failed internship.^{3/} However, I find that the Commission's complaint issuance standard has been met with regard to the alleged violations of 5.4a(1) and (3) concerning Smith filing a complaint regarding school aides exceeding their authority in the classroom and her attempts to organize the substitute teachers, both of which, i.e., filing grievances and engaging in organizing activity, may be conduct protected under our Act. I will issue a complaint on those allegations.

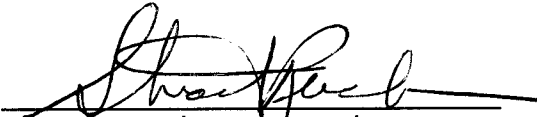
ORDER

The portion of the charge alleging discrimination for attempting to organize substitute teachers and filing a complaint

^{3/} N.J.A.C. 19:14-2.3.

with the Board concerning school aides exceeding their authority in the classroom will proceed to Complaint. The portion of the unfair practice charge alleging that Smith was discriminated against because she did not receive a hearing on her failure to obtain teacher certification and she filed with the EEOC is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: October 28, 1998
Trenton, New Jersey