

D.U.P. No. 2022-4

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

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-2019-042

ENGLEWOOD TEACHERS ASSOCIATION,
NEW JERSEY EDUCATION ASSOCIATION

Respondents,

-and-

ANNA MAZZOCOLI

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Anna Mazzoccoli (Mazzoccoli) against her former employer, Englewood Board of Education, and her former majority representative, Englewood Teachers Association (ETA) and the New Jersey Education Association (NJEA). The Director determines that the ETA/NJEA did not violate its duty of fair representation by failing to investigate and provide legal representation to Mazzoccoli in connection with the findings of a sexual harassment/healthy workplace environment investigation conducted by the Board. The Director also finds that Mazzoccoli has not alleged specific facts which, if proven, would show that the Englewood Board of Education conspired with the ETA/NJEA to deny her fair representation.

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Appearances:

For the Respondent, Englewood Board of Education,
Inglesino, Webster, Wyciskala and Taylor, LLC,
attorneys
(R. Scott Eveland, of counsel)

For the Respondent, Englewood Teachers Association,
Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

For the Respondent, New Jersey Education Association,
(Colin M. Lynch, of counsel)

For the Charging Party,
(Anna Mazzocoli, pro se)

REFUSAL TO ISSUE COMPLAINT

On June 13, 2019 and April 22, 2020, Anna Mazzocoli
(Mazzocoli or charging party) filed an unfair practice charge
and amended charge against her former employer, Englewood Board
of Education (Board), and her former majority representative,

Englewood Teachers Association (ETA) and the New Jersey Education Association (NJEA)^{1/}. The charge, as amended, alleges that in February, 2019, the NJEA and ETA violated section 5.4b(1)^{2/} of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by failing to investigate and provide legal representation to Mazzoccoli in connection with the findings of a sexual harassment/health workplace environment investigation conducted by the Board. The charge also alleges that the Board violated section 5.4a(1)^{3/} of the Act by conspiring with the ETA and NJEA in an effort to deny Mazzoccoli's request for union-paid legal representation.

On September 9, 2020, an informal exploratory conference was held with the parties.^{4/} The parties were unable to reach a voluntary resolution.

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- 1/ The NJEA was not Mazzoccoli's majority representative but it is affiliated with her majority representative - the ETA.
- 2/ 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."
- 3/ This provision prohibits 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."
- 4/ An exploratory conference was originally scheduled for August 15, 2019, rescheduled to September 25, 2019, and again rescheduled to December 5, 2019 all at the request of the charging party.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act.

N.J.S.A. 34:13A-5.4(c); 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. I find the following facts.

The ETA is the majority representative of a negotiations unit comprised of teachers and other educational professionals employed by the Board. The Board is a public employer within the meaning of the Act. The applicable collective negotiations agreement extends from July 1, 2015 through June 30, 2018.

Mazzoccoli was a non-tenured employee of the Board, who taught business education, economics and financial literacy at the Academies at Englewood High School. On February 6, 2019, Denise Tighe (Tighe), Director of Human Resources and the Affirmative Action Officer for the Englewood Public School District received a complaint from a Board employee about Mazzoccoli. Specifically, the complaint alleged that Mazzoccoli said to another ETA member during a professional development workshop: "Vignola^{5/} wants the staff to bend over and take it up the a** from administration." The complaint was investigated by

5/ David Vignola served as the President of the ETA at the time the complaint was filed.

the Board administration in meetings on February 6 and 21, 2019 that were also attended by Mazzoccoli and ETA representative Karen Gianetti. On February 21, 2019, the Board determined that Mazzoccoli's statement violated the Board's sexual harassment policy and healthy workplace environment policy. As a result, a memo of reprimand was placed in Mazzoccoli's personnel file and she was directed to attend sensitivity training.

On February 24, 2019, Mazzoccoli emailed ETA representatives Vignola, Shannon Arrieta and Gianetti, writing, "As you know, I have been under investigation for wrongdoing. As a union member, I request that I consult [with] and be represented by a union attorney immediately for a fair resolution of this matter." On February 25, 2019, Vignola replied to Mazzoccoli, writing that she may consult her own attorney and pay the costs associated with that representation. Vignola also provided her with the contact information for the NJEA Uni-Serv representative responsible for working with the ETA on behalf of the NJEA.

On March 13, 2019 and March 23, 2019, Mazzoccoli wrote to three members of the Board, requesting a Board hearing, including representation by an NJEA attorney. On March 14, 2019, Board President Kim Donaldson emailed Mazzoccoli, advising that before a hearing could be scheduled, Board Policies 0135 and 0136 would have to be followed; specifically, that issues between Board members and employees will be first referred to the

Superintendent. Board Policy 0136, entitled, "Employee Hearings Before the Board", provides:

The Board of Education acknowledges that all employees are entitled to a hearing before the Board when issues and disputes cannot be resolved at the supervisory level. When preparing for and/or conducting such a hearing, all parties involved shall follow the procedure set forth below.

- The immediate supervisor shall collect all pertinent data.
- The immediate supervisor shall document and confer with the involved employee.
- The immediate supervisor shall inform the Superintendent of the results of the conference.
- The Superintendent shall confer with the employee.
- The Superintendent shall brief the Board President on the results of the conference.
- If an employee requests a hearing, the Superintendent shall notify the members of the Board.
- The Superintendent shall present written information to the Board prior to the hearing.
- The Board President shall mediate the hearing.
- The Superintendent shall communicate the results of the hearing to the employee and supervisor involved.

No facts indicate that this procedure was collectively negotiated.

On or about April 11, 2019, Mazzoccoli met with Vignola, Arrieta and Gianetti to discuss her request for legal counsel, ". . . to expose and evaluate the facts and to clear [her] name" regarding the Board's investigation and findings. The meeting minutes provides in a pertinent part:

Anna asked: What is the plan for the sexual harassment allegation against her. Dave [Vignola] indicated what we have done: Anna had union representation both by Karen [Gianetti] and Shannon [Arrieta], Karen and Shannon notified Dave when she was not happy with the outcome of the meeting regarding the allegation and requested that she receive 3 attorneys from the NJEA, Dave contacted [NJEA Uni-Serv Representative] Rich Loccke, in which Rich spoke with both Karen and [Arrieta], then spoke to Denise Tighe, the outcome was that no attorney was going to be assigned based on the information received. It was determined that an attorney was not needed.

Anna: Was not happy with the process explained to her by Dave and insisted that she was not getting proper representation and that she did not say the statement as it appears in the write up. She further said that we as the union representatives should do an investigation. It was explained by Dave that we are not responsible for doing interviews or an investigation. Shannon then explained the process as it relates to cases like this and what role and responsibility each person has in the process. . . .

ETA acknowledges that all unit employee requests for paid legal counsel must first be approved by NJEA Managing Attorney Aileen O'Driscoll, consistent with guidelines established by the National Education Association and NJEA. In the meeting, Vignola remarked that he had spoken with O'Driscoll the previous day and that she will contact Mazzoccoli directly. O'Driscoll received a copy of the minutes taken at the April 11, 2019 meeting. In the absence of any contrary alleged facts, I infer that O'Driscoll concurred that union-paid legal counsel wasn't warranted.

In accordance with the procedure specified in Board Policy 0136, on May 17, 2019, Superintendent Robert Kravitz and Board counsel met with Mazzoccoli and her private counsel regarding the

Board's sexual harassment/health workplace environment findings and discipline imposed upon her. After the meeting, the Board placed Mazzoccoli's matter on the Board's meeting agenda scheduled for July 8, 2019. Mazzoccoli was unavailable to attend the Board meeting and her matter was not addressed on that date. On June 13, 2019, Mazzoccoli filed her unfair practice charge. Soon after, the Board advised that a hearing in accordance with Board Policy 0136 would be conducted subsequent to the conclusion of the charge.

During the summer of 2019, Mazzoccoli resigned from her position with the Board.

ANALYSIS

N.J.S.A. 34:13A-5.3 provides in part:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

Mazzoccoli did not specifically allege that the union breached its duty of fair representation by failing to provide her with paid legal counsel. The substance of her charge nevertheless asserts a duty of fair representation claim against the ETA/NJEA. Accordingly, her claims will be analyzed under the duty of fair representation framework.

In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the U.S. Supreme Court articulated the standard for determining whether a labor organization violated its duty of fair representation. The Court held:

A breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith. [Id. at 190, 64 LRRM 2376]

New Jersey has adopted the Vaca standard in deciding fair representation cases arising under the Act. See Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); see also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Saginario v. Attorney General, 87 N.J. 480 (1981); OPEIU Local 153 (Johnstone), P.E.R.C. No 84-60, 10 NJPER 12 (¶15007 1983).

A majority representative's decision to provide legal counsel to a unit member has long been held to be an internal organizational matter beyond our Act's jurisdiction, and does not amount to an unfair practice, absent facts demonstrating that the decision was arbitrary, discriminatory or in bad faith. As such, the Commission has declined to intercede in matters involving the internal affairs of unions. Bergen Community College Faculty Ass'n, P.E.R.C. No. 84-117, 10 NJPER 262 (¶15127 1984) (Commission finds no unfair practice when Association withdrew legal assistance from an employee pursuing a federal court case); New

Jersey Education Ass'n (Esser), P.E.R.C. No. 90-113, 16 NJPER 386 (¶21157 1990), aff'g D.U.P. No. 90-9, 16 NJPER 16 (¶21065 1990) (Commission affirms Director's determination that union didn't violate Act by refusing to reimburse unit employee for attorney fees) P.B.A. Local 105 (Giordano), D.U.P. No. 90-1, 15 NJPER 457 (¶20186 1989) (charge dismissed where Local refused to provide legal counsel or reimburse legal fees for employee's departmental hearing); Newark Teachers Union, D.U.P. No. 95-32, 21 NJPER 194 (¶26128 1995) (charge dismissed where union did not provide legal representation to contest involuntary transfer). Furthermore, a breach of the statutory duty of fair representation arises, ". . . in the context of either negotiations for a collective agreement between an employee representative and an employer, or administering of such an agreement during its lifetime." Bergen Community College Faculty Ass'n, H.E. No. 84-34, 10 NJPER 96, 97 (¶15050 1984).

Mazzoccoli has not alleged facts indicating that Gianetti's representation of her in the February 6 and 21, 2019 meetings was arbitrary, discriminatory or in bad faith. Assuming that Gianetti may not have raised every possible unspecified defense, I glean no facts indicating that she knowingly undermined Mazzoccoli's denials of having uttered the offending statement or knowingly omitted any defense. Mere negligence does not violate the duty of fair representation. TWU Local 225, P.E.R.C No. 85-

99, 11 NJPER 231 (¶16089 1985); Fair Lawn Bd. of Ed., P.E.R.C No. 84-138, 10 NJPER 351 (¶15163 1984).

The circumstances do not indicate that the ETA/NJEA decision not to provide paid legal counsel to Mazzoccoli to contest the reprimand violated the duty of fair representation. No alleged facts suggest that on February 25, 2019 Vignola was motivated to deny Mazzoccoli union-paid counsel because the alleged offensive statement was pejorative to him. In April, 2019, NJEA Managing Attorney O'Driscoll, who has exclusive authority to approve unit member requests for paid legal counsel, concurred that union-paid counsel to contest Mazzoccoli's reprimand was unwarranted. No facts suggest that her decision was arbitrary, discriminatory or in bad faith. For all of these reasons, I find that Mazzoccoli's claims against the ETA/NJEA do not meet the complaint-issuance standard.

Mazzoccoli also alleges that the Board violated section 5.4a(1) of the Act by conspiring with the ETA to deny her request for union-paid legal representation.

A public employer violates section 5.4a(1) if its actions tend to interfere with statutory rights of employees. NJ Sports & Exposition Auth., P.E.R.C No. 80-73, 5 NJPER 550 (¶10285 1979). This allegation fails to indicate an unlawful conspiracy. Union-paid counsel isn't a right guaranteed to employees by the Act. In February, 2019, the ETA advised Mazzoccoli that she could

obtain and pay for her own counsel to contest the reprimand, initially and implicitly advising her of a decision that was reaffirmed almost two months later by NJEA counsel, undermining the allegation of collusion among the Respondents at that time. A discussion or conversation among Respondent representatives doesn't, without more, indicate collusion.

For all of these reasons, I find the unfair practice charge does not meet the Complaint issuance standard. N.J.A.C. 19:14-2.3.

ORDER

The unfair practice charge is dismissed.

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: October 28, 2021
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 November 12, 2021.