

P.E.R.C. NO. 2014-62

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CI-2013-051

WILLINGBORO EDUCATION ASSOCIATION,

Employee Organization,

-and-

ANTOINETTE MASCIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge filed by Antoinette Mascio against the Willingboro Board of Education and the Willingboro Education Association. The charge alleges that the Board and Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by refusing to allow Mascio's personal attorney to arbitrate a challenge to the withholding of her increment. The Commission agrees with the Director's reasoning for finding that the charge presents no grounds warranting the issuance of a Complaint.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Public Employer, Long Marmero and Associates,  
LLP, attorneys (Kathleen M. Bonczk, of counsel)

For the Employee Organization, Selikoff and Cohen,  
attorneys (Steven R. Cohen, of counsel)

For the Charging Party, Geoffrey B. Gompers and  
Associates, attorneys (Geoffrey B. Gompers, of counsel)

DECISION

The Charging Party appeals from the Director of Unfair Practices refusal to issue a Complaint on an unfair practice charge Antoinette Mascio filed against the Willingboro Board of Education and the Willingboro Education Association, D.U.P. No. 2014-008, 40 NJPER \_\_\_\_ (¶ \_\_\_\_ 2013).

The charge alleges that the Board and Association unlawfully refused to allow Mascio's personal attorney to arbitrate a grievance challenging the withholding of her increment.

The Board's conduct allegedly violates 5.4a(1) and (5)<sup>1/</sup> of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act), and the Association's conduct allegedly violates 5.4b(1)<sup>2/</sup> of the Act<sup>3/</sup>. As a remedy, Mascio seeks a determination that her increment was withheld for predominantly disciplinary reasons; an order that Mascio be allowed to arbitrate her grievance with her own attorney; an order that the Association pay Mascio's attorney's fees, and that the Board and Association equally share the cost of arbitration.

On December 26, 2013, the Director of Unfair Practices, in a written decision, refused to issue a complaint finding that the

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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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

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/ Mascio also alleges that the Association violated 5.4a(5) of the Act. However, the Association is not a public employer within the meaning of the act and thus cannot violate this section.

allegations of the charge, even if true, would not constitute unfair practices on the part of the Board or the Association.

The Director reasoned:

1. Absent contract language to the contrary, the Association, not an individual employee, has the sole right to determine whether to take a grievance to binding arbitration;
2. Mascio had not alleged any facts tending to show that the Association's decision not to challenge the withholding of her increment through binding grievance arbitration violated the Association's duty of fair representation;
3. As the Board is not obligated to participate in binding arbitration unless the arbitration demand is made by the Association, it cannot be found to have violated the Act.

We agree that the charge presents no grounds to warrant the issuance of a Complaint.

ORDER

The Refusal to Issue a Complaint is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: March 27, 2014

Trenton, New Jersey