

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLOOMFIELD EDUCATION ASSOCIATION,
Respondent,

-and-

Docket No. CI-2014-045

ESSEX COUNTY EDUCATION ASSOCIATION,
Respondent,

-and-

NEW JERSEY EDUCATION ASSOCIATION,
Respondent,

-and-

NATIONAL EDUCATION ASSOCIATION,
Respondent,

-and-

DMITRIY ZVYAGIN,
Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Director of Unfair Practices refusing to issue a Complaint based on unfair practice charges filed by Dmitriy Zvyagin against the Bloomfield Education Association, Essex County Education Association, New Jersey Education Association, and National Education Association. The charges allege that the College and Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by overcharging unit members Association dues. The Commission agrees with the Director that the Appeal Board has jurisdiction over the amount of the representation fee, and further notes that disputes over dues for members are internal union matters.

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.

P.E.R.C. NO. 2015-36

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-and-

DMITRIY ZVYAGIN,

Charging Party.

Appearances:

For the Respondents, Bloomfield Education Association,
Essex County Education Association, and New Jersey
Education Association, Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys (Richard A. Friedman,
of counsel)

For the Respondent, National Education Association,
Jason Walta, of counsel

For the Charging Party, Dmitriy Zvyagin, pro se

DECISION

Dmitriy Zvyagin appeals from the refusal of the Director of Unfair Practices to issue a Complaint on unfair practice charges he filed on April 4, 2014 against the Bloomfield Education Association, Essex County Education Association, New Jersey Education Association, and National Education Association (hereinafter referred to collectively as "Association"). The charges allege that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4b(1) and (5)^{1/} by overcharging unit members Association dues for the 2013-14 fiscal year. As a remedy, Zvyagin seeks: "The overcharged amount, along with an appropriate percent to be refunded back to all affected union members."

By letter of April 8, 2014, the Deputy Director of Unfair Practices notified the Charging Party that the Commission cannot process his charge for the following reasons:

Please be advised that your charge appears to be a Public Employment Relations Commission Appeal Board matter. The substance of the charge and remedy requested appears to assert that your agency fee is excessive. It is solely the jurisdiction of the Appeal Board to make any such determination and to order any refund.

As such we cannot process your charge.

1/ These provisions prohibit 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. (5) Violating any of the rules and regulations established by the commission."

By letter of April 15, 2014, Zvyagin responded to the Deputy Director's letter with the following, in pertinent part:

It is not about my fees being too excessive. This is about union overcharging their members in Bloomfield district, and possibly in other districts across the state.

Please look at Exhibit 1 enclosed. "Dues information" - at the bottom right of the page the letter states that dues for this fiscal year are set to be \$1,101. The union however, charges its members in Bloomfield district \$1,178 (see Exhibit 2 - a reply to my answer from Bloomfield Payroll). This amount is confirmed by our union members.

There is \$77 overcharge per member compare to officially declared amount. In addition, this is likely taking place in other districts and institutions in New Jersey. Therefore, investigation of this matter is within jurisdiction on the Unfair Practice Section and has nothing to do with my fees.

By letter of June 9, the Deputy Director of Unfair Practices responded to the Charging Party, stating:

Please be advised that the Public Employment Relations Commission Appeal Board considers appeals of the amount of the representation fee paid by public employees who are not members of the majority representative.

If you are not a member of the BEA you do not have standing to address member issues, such as dues. Also, please be advised that you do not have standing to assert an issue of dues in jurisdictions other than where you are employed.

I hope this further clarifies the issues you've raised and I again suggest that your charge should be filed before the Public Employment Relations Commission Appeal Board.

By letter of July 7, the Director of Unfair Practices dismissed the charges for the reasons set forth in the Deputy Director's April 8 and June 9, 2014 letters.

On July 20, 2014, the Charging Party filed a letter purporting to appeal the decision to dismiss the unfair practice charges. On July 22, the Director of Unfair Practices advised the Charging Party that his July 20 letter does not comply with the appeal procedures set forth in N.J.A.C. 19:14-2.3.^{2/} On July 31, the Charging Party re-filed an appeal letter which stated:

By this letter, I appeal the Unfair Practice decision to dismiss charges for the above mentioned case.

I believe that based on the information submitted to your department, the Unfair Practice Section should investigate my allegations of financial manipulations done by the New Jersey Education Association (NJEA), and their affiliates (NEA, ECEA, BEA).

The Association did not file a response to Zvyagin's appeal.

The Appeal Board has "mandatory jurisdiction over the amount of the representation fee. The Commission does not have jurisdiction over that issue." Boonton Bd. of Ed. v. Kramer, 99 N.J. 523, 494 A.2d 279 (1985), cert den. 475 U.S. 1076 (1986); Anderson, Robinson and Olsen, P.E.R.C. No. 90-52, 16 NJPER 13

^{2/} The Director's letter also noted an inadvertent error in the appeal procedures regulation cited in her July 7, 2014 letter, and therefore indicated that the July 22 letter (with proper citation to N.J.A.C. 19:14-2.3) serves as notice of a refusal to issue a complaint.

(¶21008 1989). Any allegation that the amount of the nonmember representation fee deducted is inappropriate or incorrect may be raised through the demand and return system and by appeal to the Public Employment Relations Commission Appeal Board. See N.J.A.C. 1:20-1.1 et seq.; N.J.A.C. 19:17.1.1 et seq. To the extent that Zvyagin's charge contests dues for union members, we do not have jurisdiction over disputes between public employee unions and union members regarding the propriety or assessment of such dues. That dispute would strictly be an internal union matter which does not fall under the guise of the Act.

Accordingly, the Charging Party's allegations are not within the Commission's unfair practice jurisdiction, and there is no allegation or evidence that the Association breached its duty of fair representation by acting arbitrarily, discriminatorily, or in bad faith in allegedly overcharging representation fees and/or dues for the 2013-14 fiscal year.^{3/}

^{3/} A union will breach its duty of fair representation when its conduct toward a unit member is arbitrary, discriminatory or in bad faith. Vaca v. Sipes, 386 U.S. 171 (1967); Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970).

ORDER

The refusal to issue a complaint is sustained. The unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall was not present.

ISSUED: December 18, 2014

Trenton, New Jersey