

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-2019-042

ENGLEWOOD TEACHERS ASSOCIATION,

Respondent,

-and-

NEW JERSEY EDUCATION ASSOCIATION,

Respondent,

-and-

ANNA MAZZOCCOLI,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the refusal of the Director of Unfair Practices to issue a complaint on an unfair practice charge filed by Mazzoccoli against the Board, Association, and NJEA. D.U.P. No. 2022-4, 48 NJPER 231 (¶52 2021). The charge alleges that the Association and NJEA violated subsection 5.4b(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by failing to provide Mazzoccoli with union-paid legal representation for a Board sexual harassment/health workplace environment investigation into her alleged offensive statement to another employee. The charge alleges that the Board violated subsection 5.4a(1) of the Act by conspiring with the Association and NJEA to deny Mazzoccoli union-paid legal representation. The Commission finds that the Director considered the relevant facts, applied the legal standards for a breach of the duty of fair representation, and supported his decision with Commission precedent on a union's discretion to determine whether union-paid legal counsel is appropriate. Finding that Mazzoccoli has not alleged facts warranting the issuance of a complaint against the Association/NJEA or the Board, the Commission affirms the Director's dismissal of the charges.

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. 2022-24

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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, P.A., attorneys (Steven R. Cohen, of
counsel)

For the Respondent, New Jersey Education Association,
Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C.,
attorneys (Colin M. Lynch, of counsel)

For the Charging Party, Anna Mazzoccoli, pro se

DECISION

Anna Mazzoccoli appeals from the October 28, 2021 decision of the Director of Unfair Practices (Director) refusing to issue a complaint on an unfair practice charge Mazzoccoli filed against the Englewood Board of Education (Board), the Englewood Teachers Association (Association), and the New Jersey Education Association (NJEA). D.U.P. No. 2022-4. Mazzoccoli's June 13, 2019 charge and April 22, 2020 amended charge allege that in February 2019 the Association and NJEA violated subsection 5.4b(1)^{1/} 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/healthy workplace environment investigation conducted by the Board. The charge also alleges that the Board violated subsection 5.4a(1)^{2/} of the Act by conspiring with the Association and NJEA in an effort to deny Mazzoccoli's request for union-paid legal representation.

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."

2/ 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."

The Director's decision found that Mazzoccoli has not alleged facts to support a determination that the Association and/or NJEA breached their duty of fair representation and violated subsection 5.4b(1) of the Act. Specifically, the Director found no alleged facts indicating that the Association's representation of her during the Board's investigation was arbitrary, discriminatory, or in bad faith. The Director also found no alleged facts to indicate that the decision of the Association and NJEA to not provide Mazzoccoli with paid legal representation was arbitrary, discriminatory, or in bad faith.

On appeal, Mazzoccoli asserts that the Director erred by omitting certain facts contained in her allegations. She argues that under the recently passed New Jersey law referred to as "pass the trash," all individuals accused of sexual misconduct are to report it when applying for school jobs. Therefore, she contends, the Association should have considered the allegations against her serious enough to warrant assignment of an attorney. She repeats her claim that the Association colluded with the Board to deny her representation by an attorney. Mazzoccoli also reiterates her claim that a male colleague who was recently accused of sexual misconduct was, unlike her, immediately removed from the classroom, placed on leave, and assigned an attorney. She also repeats her claim that the Association should have done more to represent her and not deferred to the findings of the

administration's investigation. Mazzoccoli next contends that the Director's decision should have addressed the fact that it was her Association building representative who reported her alleged inappropriate comments to a Board employee.

On November 16, 2021, the Association and NJEA filed responses to Mazzoccoli's appeal. The Board did not file a response. The Association responds that Mazzoccoli's allegations of collusion between it and the Board during the sexual harassment investigation are not supported by any facts or evidence that the Association took any action that was arbitrary, discriminatory, or in bad faith. The Association asserts that Mazzoccoli's claim regarding a male colleague accused of sexual harassment being assigned an attorney does not constitute a breach of the duty of fair representation because, by her own admission, the allegations against the male colleague were far more serious as they prompted his immediate removal from the classroom. The Association put Mazzoccoli in touch with an experienced NJEA representative but the Association and NJEA did not assign an attorney to Mazzoccoli because they determined that the level of discipline did not warrant it. The Association also argues that Mazzoccoli's contention that she could be adversely affected by the "pass the trash" law is legally incorrect, as that law is limited in scope to employees found to have inappropriate conduct involving children.

The NJEA responds that Mazzoccoli's discipline - a note of reprimand in her personnel file and sensitivity training - did not warrant assignment of an attorney because it was much milder than the situation of her male colleague. It argues that there is no evidence supporting Mazzoccoli's belief that Association President Vignola was motivated to deny her union-paid legal counsel because her alleged offensive statement was derogatory to him. Rather, the NJEA argues, the record shows that the Association and NJEA reviewed Mazzoccoli's case and determined that attorney representation was not warranted under the circumstances. The NJEA also asserts that it researched the "pass the trash" law and communicated to Mazzoccoli that it does not apply to the circumstances. It contends that Mazzoccoli's disagreement with the NJEA's and Association's positions on these issues does not entitle her to union-paid counsel or otherwise support a finding of a breach of the duty of fair representation.

We adopt and incorporate the Director's factual findings. D.U.P. No. 2022-4 at 3-7. We sustain the Director's refusal to issue a complaint for the reasons set forth in his comprehensive, well-reasoned decision. On appeal, we find that the Charging Party has not stated a factual or legal basis for not sustaining that decision. N.J.A.C. 19:14-2.3(b). We add the following.

The United States Supreme Court has held that a breach of the statutory duty of fair representation occurs only when a

union's conduct towards a member of the negotiations unit is arbitrary, discriminatory or in bad faith. Vaca v. Sipes, 386 U.S. 171, 191 (1967). The Commission and New Jersey courts have adopted the Vaca standard in deciding fair representation cases arising under the Act. See Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); D'Arriago v. New Jersey State Bd. of Mediation, 119 N.J. 74, 76 (1990); and Jersey City Housing Auth., P.E.R.C. No. 2015-70, 41 NJPER 477 (¶148 2015), aff'd, 43 NJPER 255 (¶77 App. Div. 2017). "The complete satisfaction of all who are represented is hardly to be expected" and "[a] wide range of reasonableness must be allowed a statutory bargaining representative in servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." PBA Local 187, P.E.R.C. No. 2005-78, 31 NJPER 173 (¶70 2005) (citing Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953)).

The Director's decision considered the relevant facts and applied the legal standards for a breach of the duty of fair representation. D.U.P. No. 2022-4 at 7-11. The Director's decision considered the fact that Mazzoccoli's alleged inappropriate comment was derogatory to President Vignola, who was involved in representing her and determining that she would not be provided with a union-paid attorney. D.U.P. No. 2022-4 at

3-4. The Director's decision also considered the facts surrounding the Association's and NJEA's determination that Mazzoccoli's situation did not warrant the assignment of a union-paid attorney. D.U.P. No. 2022-4 at 4-6. The Director analyzed these facts under the applicable legal standard, finding:

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.

[D.U.P. No. 2022-4 at 10.]

The Director's decision was supported by pertinent Commission precedent on the specific issue of a union's discretion to determine whether paid legal counsel is appropriate. See, e.g., 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 finds union did not violate Act by refusing to reimburse unit employee for attorney fees); 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).

Finally, we find that Mazzoccoli's comparison to a different allegation of sexual harassment involving a male colleague does not support her claim that the decision not to provide her with an attorney was arbitrary, discriminatory, or in bad faith. Mazzoccoli's situation is distinguishable for its lack of severity. As she stated, the allegations against the male colleague prompted his immediate removal from the classroom and placement on leave. Mazzoccoli's alleged offensive statement resulted in discipline consisting of a letter of reprimand and sensitivity training. D.U.P. No. 2022-4 at 4. The Association determined, and the NJEA ultimately concurred, that the circumstances did not warrant union-paid legal counsel. D.U.P. No. 2022-4 at 4-6, 10. Mazzoccoli has not alleged facts to support a finding that the NJEA's decision was arbitrary, discriminatory, or in bad faith. Her personal legal opinion on the potential career ramifications of the allegations and discipline against her does not equate to a requirement that the NJEA assign her paid legal counsel, in addition to local Association and NJEA representation, to avoid a breach of the duty of fair representation.

ORDER

The Director's refusal to issue a complaint is sustained and Mazzoccoli's unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Ford, Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Bonanni was not present.

ISSUED: December 21, 2021

Trenton, New Jersey