

P.E.R.C. NO. 90-113

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-89-89

PETER ESSER,

Charging Party.

Appearances:

SYNOPSIS

The Public Employment Relations Commission affirms the Director of Unfair Practices' refusal to issue a complaint in an unfair practice charge filed by Peter Esser against the New Jersey Education Association. The charge claimed that the NJEA violated the New Jersey Employer-Employee Relations Act by refusing to reimburse Esser for the cost of obtaining an attorney outside the NJEA network for a medical transfer case. He further alleged that the NJEA did not inform him of NJEA reimbursement procedures and did not afford him a fair appeals process. The Commission finds that Esser has failed to allege facts sufficient to support a conclusion that the NJEA violated the Act.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-89-89

PETER ESSER,

Charging Party.

Appearances:

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Richard A. Friedman, of counsel)

For the Charging Party, Peter Esser, pro se

DECISION AND ORDER

On May 25, 1989, Peter Esser filed an unfair practice charge against the New Jersey Education Association ("NJEA"). Esser alleges that the NJEA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1), (2), (3), (4) and (5),^{1/} by refusing to reimburse Esser

^{1/} These subsections 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

for the costs of retaining an attorney outside the NJEA network for a medical transfer case. He further alleges that the NJEA did not inform him of NJEA reimbursement procedures and did not afford him a fair appeals process.

On January 26, 1990, the Director of Unfair Practices refused to issue a Complaint. D.U.P. 90-9, 16 NJPER 161 (¶21065 1990). He found many of Esser's allegations to be untimely under N.J.S.A. 34:13A-5.4(c). The only timely allegations concerned appeals to NJEA's Professional Rights and Responsibilities Committee and its president. The Director concluded that absent a suggestion that Esser's appeals were treated arbitrarily, discriminatorily or in bad faith, his allegations concerned internal union matters and could not be an unfair practice.

Esser filed an appeal with the Director who informed him that appeals must be directed to us. On March 19, 1990, Esser filed an appeal with us. Esser claims that the Director and his agents never interviewed him about his charge; he was informed by someone from our office that his charge would be timely; and the NJEA incorrectly told him he was not entitled to reimbursement for a non-network attorney.

We have reviewed Esser's allegations. They refer to an NJEA document that requires use of network attorneys, but provides that exceptions may be granted when reasonable to do so. Esser has failed to allege facts sufficient to support a conclusion that the

NJEA violated the Act by refusing to make an exception or by denying appeals of that refusal.

ORDER

The refusal to issue a Complaint is affirmed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Reid and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration. Commissioners Ruggiero and Smith were not present.

DATED: Trenton, New Jersey
June 25, 1990
ISSUED: June 26, 1990