

P.E.R.C. NO. 94-55

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARAMUS EDUCATION ASSOCIATION,  
NEW JERSEY EDUCATION ASSOCIATION, and  
NATIONAL EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-H-93-69

MARIE HAKIM,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Paramus Education Association, the New Jersey Education Association and the National Education Association violated the New Jersey Employer-Employee Relations Act by collecting representation fees from Marie Hakim after terminating her membership in the employee organizations because she served on the negotiations committee for a public employer separate from the one that employs her.

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Appearances:

For the Charging Party, Carlin & D'Elia, attorneys (Anthony V. D'Elia, of counsel)

For the Respondents, Bredhoff & Kaiser, attorneys (Robert H. Chanin and Andrew D. Roth, of counsel)

DECISION AND ORDER

On March 16, 1993, Marie Hakim filed an unfair practice charge against the Paramus Education Association ("PEA"), the New Jersey Education Association ("NJEA"), and the National Education Association ("NEA"). Hakim is an employee of the Paramus Board of Education and a member of a collective negotiations unit represented by the PEA. The charge alleges that the respondents violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1) and (5),<sup>1/</sup> by collecting

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<sup>1/</sup> 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. (5) Violating any of the rules and regulations established by the commission."

representation fees from her after terminating her membership in the employee organizations because she serves on the negotiations committee for a separate public employer, the Clifton Board of Education.

On August 9, 1993, a Complaint issued. The parties entered into these verbatim stipulations:

The parties stipulate there are no facts in dispute. They have agreed to stipulate the facts and send the case directly to the Commission.

The parties recognize that the facts as stipulated constitute the complete record to be submitted to the Commission. To the extent that the stipulated facts are insufficient to sustain the Charging Party's burden of proof by a preponderance of the evidence, the complaint may be dismissed by the Commission.

The respondent must rely upon the sufficiency of the stipulated record to sustain any affirmative defense it has asserted or to rebut or disprove the existence of a prima facie case established by the Charging Party.

1. The Charging Party, Marie Hakim, is employed as a teacher in the Paramus School District, and is a member of the negotiating unit for which the respondent Paramus Education Association ("PEA") is recognized pursuant to the New Jersey Public Employer-Employee Relations Act ("ACT") as the majority representative. PEA is a local affiliate of the respondent New Jersey Education Association ("NJEA").

2. Because Hakim served as a member of the negotiating team for the Clifton School District, she was in violation of a bylaw of the National Education Association ("NEA"), which is the national parent organization of NJEA and PEA, and automatically was denied NEA membership. Under the terms of the affiliation relationship, Hakim likewise automatically was denied NJEA and PEA membership.

3. Hakim filed an unfair practice charge against NEA with the Public Employment Relations Commission ("PERC"), alleging that NEA violated the Act when it denied her membership. The PERC Director of Unfair Practices concluded that "the application of the NEA's by-law to Marie Hakim was not arbitrary, capricious, or invidious and does not impermissibly interfere with Hakim's rights under the Act." Accordingly, the Director "decline[d] to issue a complaint on the allegations of this charge." Refusal to Issue Complaint, January 14, 1993, at 4. The Director specifically noted, however, that "Hakim must still be properly represented by the local negotiations representative." Id.

4. Because "Hakim must still be properly represented by [PEA]," PEA charged her a representation fee pursuant to its collective negotiations agreement with the Paramus School District. In response, Hakim filed this unfair practice charge.

N.J.S.A. 34:13A-5.5 et seq. permits a majority representative to receive a representation fee in lieu of dues from unit employees who are not members of the majority representative. N.J.S.A. 34:13A-5.6 requires a majority representative wanting to collect a representation fee to make membership available to all unit employees on an equal basis.

In Bergen Cty. Sheriff (Neely), P.E.R.C. No. 88-9, 13 NJPER 645 (¶18243 1987), aff'd 227 N.J. Super. 1 (App Div. 1988), recon. den. (3/15/88), certif. denied, 111 N.J. 591 (1988), we concluded that "a majority representative cannot collect representation fees from employees denied membership solely because they belong to other employee organizations." Id. at 646. We reasoned that the purpose of the representation fee amendment -- to eliminate the "free ride"

enjoyed by nonmembers who receive the benefit of the majority representative's services without sharing the costs -- was not implicated. The charging party was willing to share the costs by paying dues and any "free ride" resulted from the majority representative's denying his application for membership. We noted that there might be an exception when membership was terminated for disrupting union affairs or where membership was conditioned on not participating in confidential union affairs more specifically implicating the conflict between rival organizations. Id. at n.3; see also City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982).

FOP Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990), fell within the Bergen Cty. exception. There the expelled members were disrupting FOP affairs by attempting to have the FOP removed as the majority representative. We concluded that the legislative scheme would be undermined by allowing active support for a rival organization in a representation election to nullify a unit member's obligation to pay his or her fair share for services rendered by the majority representative.

On this limited record, we hold that the respondents could not receive representation fees from the charging party after she was denied union membership because she served on another school board's negotiations team. Hakim did not disrupt union affairs and no basis appears for assuming that any disruption will flow from affording basic membership to an employee holding public office and having labor relations responsibilities in another district.

Contrast Bergen Cty. While the NEA and its affiliates may not be required to accept Hakim for membership, they cannot both deny membership and demand fees under the circumstances of this case.

ORDER

The Paramus Education Association, the New Jersey Education Association and the National Education Association are ordered to:

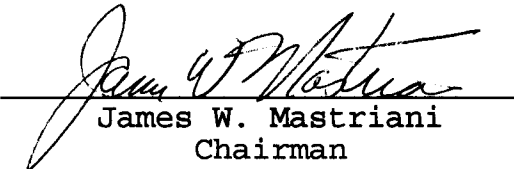
A. Cease and desist from continuing to receive representation fees from Marie Hakim until they make membership available to her without requiring her to resign from the negotiations team of the Clifton Board of Education.

B. Take this action:

1. Refund all representation fees paid by Marie Hakim from September 11, 1992 plus interest at the rates set in R. 4:42-11.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondents have taken to comply with this order.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting and Grandrimo voted in favor of this decision. Commissioner Smith voted against this decision. Commissioners Bertolino and Regan abstained from consideration.

DATED: November 15, 1993  
Trenton, New Jersey  
ISSUED: November 16, 1993