

D.U.P. NO. 95-31

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CARTERET EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-95-28

SAAD RADWAN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses portions of an amended unfair practice charge filed by Saad Radwan against his majority representative, the Carteret Education Association and issues a Complaint and Notice of Hearing on one allegation.

The Director dismissed certain allegations of the amended charge that fell outside the six month statutory period. The Director also dismissed Radwan's demand that the Association provide legal counsel rather than be represented by the union president, as well as Radwan's assertion that the union must appeal his disciplinary grievance rather than settle it. An allegation that the union failed to ensure that the employer implement a grievance settlement is moot and was also dismissed.

The Director issued a Complaint and Notice of Hearing on an allegation that the union president, who is also the union grievance chairperson, withheld grievance forms, thereby preventing Radwan from filing individual grievances in accordance with the parties' agreement.

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Appearances:

For the Respondent,  
Wills, O'Neill & Mellk, attorneys  
(Arnold M. Mellk, of counsel)

For the Charging Party,  
Saad Radwan, pro se

DECISION

On December 6, 1994 and February 27, 1995, Saad Radwan filed an unfair practice charge and amended unfair practice charge with the Public Employment Relations Commission against his majority representative, the Carteret Education Association, alleging a violation of subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> Radwan alleges that the Association (1) on several occasions, refused to file and process his grievances; (2) refused to provided

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<sup>1/</sup> This subsection 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.

him with representation at a meeting on August 26, 1992, with his employer, the Carteret Board of Education; (3) failed to ensure that the Board remove a letter of reprimand from his personnel file; (4) refused to provide an attorney to represent him; and (5) chose to negotiate a settlement with Board, rather than defend Radwan against termination charges.

The Association argues that Radwan's allegations are untimely and do not state a violation of the Act. The Association denies that it has refused to provide Radwan with representation. It asserts that it has properly exercised its right to determine the merits of Radwan's grievances and, as a consequence, has processed grievances on his behalf. It states that it successfully interceded in Radwan's behalf, convincing the Board not to press tenure charges against him for allegedly making serious personal threats against Board members. In addition, it resolved a grievance informally whereby the Board agreed to remove a letter of reprimand from Radwan's personnel file.

Certain of Radwan's allegations do not meet the complaint issuance standard for timeliness and must be dismissed. The Act requires that unfair practice charges be filed within six months after the alleged unfair practice occurred unless the charging party was prevented from filing the charge. N.J.S.A. 34:13A-5.4(c).

Radwan alleges that the Association failed to represent him at a meeting held on August 26, 1992. He also alleges that the Association ignored his request to file a grievance in October 1991,

telling him to "keep quiet or (he) would not get tenure." A third allegation indicates that on an unspecified date, the Association dropped one of his grievances, initiated after he was disciplined on February 2, 1993.<sup>2/</sup> All of these events have occurred beyond the six month statute of limitations. Accordingly, I refuse to issue a complaint on these allegations.

N.J.S.A. 34:13A-5.3 establishes a majority representative's exclusive right to represent unit employees for purposes of collective negotiations. That right is accompanied by a responsibility to represent the interests of all employees without discrimination and without regard to employee organization membership. See also Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409 (1970). In considering a majority representative's duty of fair representation with respect to handling grievances, a union's conduct toward a unit member in deciding whether to process a grievance, we have applied the standard established for private sector unions in Vaca v. Sipes, 386 U.S. 171 (1967); Belen v. Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976).

In Vaca v. Sipes, the Supreme Court held:

...a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith.  
[Id. at 190, 64 LRRM 2376]

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<sup>2/</sup> Radwan indicates that the reason the grievance was "dropped" was that the Association subsequently settled the matter with an agreement that the Board would remove a disciplinary letter from his personnel file.

Mere negligence, standing alone, does not rise to the level of a breach of the duty of fair representation. Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984).

In applying this standard, I find that other of Radwan's allegations do not meet the complaint issuance standard and therefore must be dismissed. Radwan alleges that the Association breached its duty of fair representation because its president, Mr. Cowan, removed an NJEA attorney from his case. Radwan asserts that the Association president disagreed with the attorney's assessment that Radwan was being discriminated against by his immediate supervisor.

A union does not have an obligation to provide legal counsel. The Commission has determined that providing legal assistance to unit employees is an internal union matter not within Commission jurisdiction. Bergen Community College Faculty Association, P.E.R.C No. 84-117, 10 NJPER 262 (¶15127 1984); See also, Camden County College, D.U.P. No. 89-11, 15 NJPER 171 (¶20072 1989). Radwan does not allege that the Association refused to provide any representation or that its actions subsequently prejudiced the case that was being prepared in his behalf. Consequently, there are no facts alleged indicating that the Association acted arbitrarily, discriminatorily or in bad faith.

Radwan complains that the Association negotiated a settlement of the Board's tenure charges against him rather than defend against his termination. The settlement of labor disputes is the core of this Commission's statutory mission N.J.S.A.

34:13A-2. The Association not only has a right to attempt to settle disputes with the employer, but it is encouraged by the Commission to engage in such efforts. Westlake Ed. Assoc., D.U.P. No. 94-13, 19 NJPER 521 (¶24241 1993). Moreover, documentation provided by Radwan shows that the Board dropped its termination charges against him; therefore, the Association's settlement efforts were ultimately successful.

Radwan also alleges that the Association did not ensure that the Board honor a grievance settlement by removing a disciplinary letter from his file. This allegation appears to be moot. The Association states, and Radwan agrees, that the letter has been removed from his personnel file.

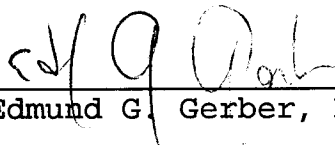
Finally, Radwan alleges that the Association has refused to file and process three grievances he sought to have processed in October 1994. He states that Cowan, who is also the grievance chairman, "does not allow any employee to file any grievance without his approval." This is contrary to a provision in the parties' negotiated grievance procedure which allows an individual to informally initiate a grievance at step 1 or formally file a grievance in writing at Step 2. Radwan submitted grievance forms to illustrate that Cowan has filled them out and then had Radwan sign them.

It is not a breach of a union's duty of fair representation if the union does not file a grievance where the grievance procedure provides for the individual unit member to file directly. Trenton Ed. Secys. Assn., P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986). However, the union may not arbitrarily deny a unit member access to

the grievance procedure by withholding grievance forms. The documents submitted by Radwan indicated that this may be the case.

Accordingly, I order that a Complaint and Notice of Hearing be issued on the allegation(s) that the Association prevented Radwan from filing grievances in violation of 5.4(b)(1) of the Act. The remainder of the charge and amended charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Edmund G. Gerber, Director

DATED: April 5, 1995  
Trenton, New Jersey