

D.U.P. NO. 2015-10

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

In the Matter of

COUNCIL OF NEW JERSEY
STATE COLLEGE LOCALS, AFL-CIO,
Respondent,

-and-

Docket No. CI-2014-047

MARY ROMAN,
Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Mary Roman against her former majority representative, Council of New Jersey State College Locals, AFL-CIO (Council), alleging the Council breached its duty of fair representation (DFR) to Roman at an arbitration hearing. Roman alleged the Council breached its DFR by failing to introduce certain witness testimony and documentary evidence at the arbitration and by providing poor advice in preparation for and during the arbitration proceeding. Roman further alleged that she lost the arbitration because of the Council's inadequate representation. The Director held that, even if Roman's allegations were true, the Council's conduct in handling the arbitration is not worse than negligent and thus does not rise to the level of a DFR violation.

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Appearances:

For the Respondent,
Mets Schiro and McGovern, LLP, attorneys
(Kevin P. McGovern, of counsel)

For the Charging Party,
(Mary Roman, Pro Se)

REFUSAL TO ISSUE COMPLAINT

On April 30 and June 30, 2014, Mary Roman (Roman or Charging Party) filed an unfair practice charge and amended charge against the Council of New Jersey State College Locals, AFL-CIO (Council or Respondent). The charge, as amended, alleges that the Council violated sections 5.4b(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by

^{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. (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."

breaching its duty of fair representation at a grievance arbitration hearing. Roman also alleges the Council provided inadequate representation at the hearing that led to an adverse decision against her.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3; CWA Local 1040(Weisman), D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

On November 18, 2014, I issued a letter to the parties tentatively dismissing the charge and inviting responses. The Charging Party filed a letter with accompanying documents on December 23, 2014.

I find the following facts:

The Council is the majority representative of faculty, librarians and professional employees at nine (9) State colleges and universities in New Jersey, including Kean University. The Council and Kean University (along with eight other State colleges) are parties to a collective negotiations agreement extending from July 1, 2011 through June 30, 2015 (Agreement).

In 2003, Roman was employed by Kean as a "professional services specialist III" (PSS). Roman held the PSS title until her employment was terminated on February 28, 2011 as part of a layoff plan. Kean placed Roman on a re-employment list in the event a position became available for which she was qualified. When positions became available, Roman was not offered re-employment by Kean.

On June 4, 2012, the Council filed a grievance on behalf of Roman contending that Kean violated the parties agreement by filling positions Roman was qualified to perform. According to the Council, Roman should have been offered re-employment in these positions under the agreement. The Council pursued binding arbitration of the grievance.

An arbitration hearing was conducted on September 25 and October 30, 2013. On March 17, 2014, the arbitrator issued an award, denying the Council's grievance. The arbitrator noted in his opinion that the Council "made a powerful equitable argument on behalf of the Grievant [Roman]" and that the Council made "every possible argument" against denying the grievance.

Roman alleges in the charge that the Council breached its duty of fair representation by failing to introduce documents, witness testimony and other information at the arbitration hearing that could have led to a favorable arbitration award. Roman also alleges that Council ". . .displayed a continuous

pattern of discrimination towards [her]" and provided inadequate representation at the arbitration hearing.

A union breaches its duty of fair representation (DFR) only when its conduct towards a unit employee is arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. 171, 190 (1967); Hines v. Anchor Motor Freight, 424 U.S. 554, 91 LRRM 2481 (1976). Our Supreme Court and Commission have consistently applied this standard to DFR claims. See, e.g., Saginario v. Attorney General, 87 N.J. 480 (1981); In re Bd. of Chosen Freeholders of Middlesex Cty., P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (4/1/82), pet. for certif. den. 6/16/82). In the context of a union's handling of an arbitration, we have held that a union's alleged failure to present relevant items of evidence at a arbitration hearing is not a DFR violation. Paterson School District, NJEA and Rodney Dotson, D.U.P. No. 2014-10, 40 NJPER 383 (¶132 2014).

In Paterson School District, the Director of Unfair Practices dismissed an allegation that a union violated its DFR by failing to present certain evidentiary items at an arbitration hearing. The District had discharged a unit employee and the employee's union representative grieved the termination and lost at arbitration. The unit employee alleged the union violated its duty of fair representation by providing "wrong advice"; by failing to present "statements, documents, and information" at

the arbitration hearing that supported the employee's grievance; and by treating him differently than other unit members by not providing the same level of representation. 40 NJPER at 383. The Director rejected the DFR claim, holding that the union's representation at the arbitration hearing was "not worse than negligent" and therefore not "arbitrary, discriminatory, or in bad faith." 40 NJPER at 385.

The rationale of Paterson School District controls the outcome of this case. Roman alleges the Council breached its DFR by failing to introduce certain documents and witness testimony into evidence at the arbitration hearing. She also alleges that she received poor advice and representation at the arbitration hearing and that, as a result, she lost the arbitration. These facts are virtually identical to those alleged by the charging party in Paterson School District. Most importantly, the alleged facts do not identify conduct that is worse than negligent. On the contrary, the Council advocated Roman's interests at the arbitration hearing, eliciting the arbitrator's assessment in his opinion that the Council advanced a "powerful equitable argument" and raised "every possible argument" against denying Roman's grievance. In response to our November 18 letter tentatively dismissing the charge, Roman filed a letter criticizing the Council's representation of her in preparation for and during the arbitration proceedings. Since these allegations, if true, only

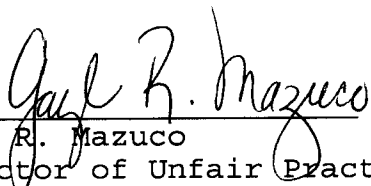
establish the Council's negligent representation of Roman, I do not find that they rise to the level of a DFR violation. Roman does not allege facts indicating the Council acted in an arbitrary, discriminatory, or bad faith manner. Even if its representation had been negligent, that conduct would not have breached the Council's DFR.

Roman also alleges that the Council violated section 5.4b(3) of the Act. The Commission has held that individual employees do not have standing to assert a 5.4b(3) violation. Only employers have standing to pursue a 5.4b(3) claim. State of N.J. (Juvenile Justice), CWA Local 1040 and CWA District 1 and Judy Thorpe, P.E.R.C. No. 2013-29, 39 NJPER 205 (¶66 2012), recon. den. P.E.R.C. No. 2014-9, 40 NJPER 172 (¶66 2013); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978); CWA Local 1034 and Renaldo A. King, D.U.P. No. 2004-2, 29 NJPER 367 (¶113 2003).

Accordingly, I find that the Charging Party's 5.4b(1) and (3) allegations do not satisfy the complaint issuance standard.

ORDER

The unfair practice charge is dismissed.



Gayl R. Mazuco
Director of Unfair Practices

DATED: January 12, 2015
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by January 30, 2015.