

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

In the Matter of

STATE OF NEW JERSEY

(DEPARTMENT OF TREASURY),

Respondent,

-and-

Docket No. CI-2019-020

COMMUNICATIONS WORKERS OF AMERICA

LOCAL 1033,

Respondent,

-and-

SARAH FREEMAN,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismissed an unfair practice charge filed by an individual, Sarah Freeman (Freeman), against her employer and majority representative. The charge alleges that Freeman's employer violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq., by improperly refusing to promote her; failing to properly compensate her for working out-of-title; and subjecting her to retaliation for engaging in protected activity. The charge also alleges that Freeman's majority representative violated the Act by disregarding and failing to respond to her complaints and requests for assistance. Initially, the Director dismissed any/all allegations that occurred six months before the charge was filed given that they fall outside the statute of limitations and no facts suggest that Freeman was prevented from filing a charge within the statutory period. The Director also determined that Freeman was subject to the Civil Service Act, N.J.S.A. 11A:1-1, et seq., and related regulations, N.J.A.C. 4A:1-1.1, et seq., including the rule of three, assignment/reassignment/movement related to title and/or division, and applicable appeal procedures.

The Director dismissed Freeman's 5.4a(2), (4), and (7) claims against her employer, finding that same were unsupported by the facts alleged. The Director also dismissed Freeman's 5.4a(5) and (6) claims against her employer, finding that Freeman lacked standing to assert same. Finally, the Director dismissed Freeman's 5.4a(1) and (3) claims against her employer, finding that the charge did not allege facts indicating that Freeman's employer engaged in conduct that violates the Act; and that if the alleged retaliation, harassment and/or hostile work environment is based upon Freeman's race, creed, color, etc., her allegations may constitute unlawful employment practices within the meaning of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq., but do not warrant the issuance of a complaint under the Act.

The Director dismissed Freeman's 5.4b(2), (4), and (5) claims against her majority representative, finding that same were unsupported by the facts alleged. The Director also dismissed Freeman's 5.4b(3) claims against her majority representative, finding that Freeman lacked standing to assert same. Finally, the Director dismissed Freeman's 5.4b(1) claim against her majority representative, finding that the charge only establishes that Freeman disagrees with her majority representative's view of its contractual obligations and role within a Civil Service jurisdiction; that no facts suggest that her majority representative interpreted the parties' collective negotiations agreement in a bad faith, discriminatory, or arbitrary manner or establish a breach of the duty of fair representation; and that mere negligence is insufficient to establish a viable claim.



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Appearances:

For the Respondent, State of New Jersey (Department of Treasury), Gurbir S. Grewal, Attorney General of New Jersey (Alexis F. Fedorchak, Deputy Attorney General)

For the Respondent, Communications Workers of America Local 1033, Weissman & Mintz, LLC, attorneys (Charlette Matts-Brown, of counsel)

For the Charging Party, Sarah Freeman, pro se

**REFUSAL TO ISSUE COMPLAINT**

On December 5, 6, 17, and 31, 2018, January 2, 2019, and June 27, 2019, Sarah Freeman (Freeman) filed an unfair practice charge and amended charges against her employer, the State of New Jersey (Dep't of Treasury) (State), and her majority representative, Communications Workers of America Local 1033

(CWA). As amended, the charge alleges that from approximately 2007-present, the State violated section 5.4a(1), (2), (3), (4), (5), (6), and (7)<sup>1/</sup> of the New Jersey Public Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq., and that CWA violated section 5.4b(1), (2), (3), (4), and (5)<sup>2/</sup> of the Act. Freeman alleges that despite taking a Civil Service exam in 2007

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1/ These provisions prohibit 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

2/ 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. (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."

and placing second on the applicable eligibility list, she was improperly refused a promotion, while others who placed below her on the list were promoted. Since 2009, Freeman alleges that she has been doing the work of a Claims Investigator despite the fact that she does not hold that title and that she has not been compensated accordingly. She claims that the State has retaliated against her for engaging in protected activity (i.e., seeking redress for these alleged infractions in various forums) by continuing its refusal to promote her, "renumbering" her title, improperly suggesting that she would be disciplined for refusing to sign a document, and exposing her to harassment and/or a hostile work environment. Freeman also claims that throughout this period, but particularly since October 3, 2018, CWA has disregarded and failed to respond to her complaints and requests for assistance.

On March 6, 2019, an informal exploratory conference was held with the parties. The parties were unable to reach a voluntary resolution.

On April 16, 2019, the State filed a letter denying that it engaged in any unfair practices and urging our dismissal of the charge against it. It more specifically asserts that it has the discretion to appoint one of the top three interested eligible candidates from an open competitive or promotional list pursuant to N.J.A.C. 4A:4-8(a)(3). The State also maintains that it has

done nothing more than defend itself against allegations that Freeman has asserted in various forums and that Freeman has failed to identify any interference, restraint, or coercion by the State related to rights guaranteed by our Act other than broad allegations of retaliation and discrimination. It contends that Freeman has made no reference to any interference by the State in the formation, existence or administration of any employee organization or to a failure by the State to negotiate in good faith with a majority representative of employees regarding the terms and conditions of employment. The State also asserts that only the duly certified majority representative of an employee organization may raise a claim under N.J.S.A. 34:13A-5.4a(5).

On April 18, 2019, CWA filed a letter denying that it engaged in any unfair practices and urging our dismissal of the charge against it. It more specifically asserts that any aspect of the charge alleging violations that occurred more than six months before December 5, 2018 - particularly Freeman's allegation "that a union representative submitted an ineffective document to the Civil Service Commission in May of 2009" - must be dismissed as untimely pursuant to N.J.S.A. 34:13A-5.4(c). CWA notes that appeals of Civil Service examinations and promotions are governed by N.J.S.A. 11A:2-14, -15 and do not fall within the purview of the parties' collective negotiations agreement. It

contends that it repeatedly informed Freeman about the applicable appeal process and that on March 16, 2017, CWA New Jersey Area Director Hetty Rosenstein sent Freeman a letter which thoroughly explained the applicable Civil Service rules and provided examples of how the rules are applied. CWA also asserts that in response to Freeman's October 17, 2018 emails seeking to discuss a March 1, 2017 Promotional Announcement and Freeman's 2019 Performance Assessment Review (PAR), there was an exchange of emails to schedule a meeting that took place on November 1, 2018. It maintains that during the November 1, 2018 meeting, CWA National Representative George Jackson (Jackson) agreed to reach out to Civil Service regarding Freeman's complaint after Freeman provided him with the names and contact information for the Civil Service employees that had previously advised her on the matter. CWA has no record of Freeman providing Jackson with that information and contends that Freeman has not identified any rule or contractual provision mandating that it provide a response to her inquiry within any particular time frame. It maintains that Freeman has not set forth in any detail or with any specificity allegations or facts to suggest that it treated her in an arbitrary, discriminatory or bad faith manner and therefore Freeman cannot maintain a claim that CWA has breached its duty of fair representation. It also notes that Freeman does not allege

bad faith, hostility, or that CWA acted discriminatorily when it failed to pursue her complaints through the grievance procedure.

On May 16, 2019, Freeman filed a letter asserting that a complaint should issue regarding the allegations set forth in her charge. Freeman concedes that her charge is based upon events beginning in August of 2018 and culminating in December when she submitted the unfair practice charge; she also concedes that the information included in the charge from 2007-2017 was simply background. Freeman maintains that during the November 1, 2018 meeting, CWA representatives stated that they would look into her concerns and get back to her but failed to do so as of January 2, 2019 even after Freeman left "several phone messages and sen[t] email to them." She contends that she provided CWA with the information that they requested regarding her contacts with Civil Service and asserts that CWA should be responsible for "researching further who makes decisions at the Department of the Treasury." Freeman also asserts that CWA never responded to her concerns about a promotional announcement email that she received on March 1, 2017 indicating she was eligible to apply for a Technical Assistant 1 position. She maintains that in response to providing CWA with information demonstrating that she is doing the work of a Claims Investigator (despite the fact that she is not in that title or being compensated appropriately), CWA told her to seek a desk audit. Freeman claims that she requested a



desk audit but the request was ultimately rejected due to purported changes in the process. She reiterates that she is "asking for fairness and to be heard[,] not for Treasury and [CWA] to continue to hide behind technicalities" because "[a]fter 18 years of being a loyal, trustworthy and consistent employee [she] believe[s] at a minimum that [she] deserve[s] that."

On June 19, 2019, we issued a letter to the parties advising of our tentative determination to dismiss the charge in its entirety. We also advised that a decision consistent with this determination would issue in the absence of a voluntary withdrawal of the charge or submissions that warranted the issuance of a complaint. We asked Freeman to submit a formal amendment to the charge or a letter brief by June 27, 2019 if she believed our determination was incorrect or wished to bring additional material facts to our attention.

On June 27, 2019, Freeman filed an amended charge and a letter reasserting that a complaint should issue regarding the allegations set forth in her charge. Freeman maintains that "in September of 2018[,] when [she] contacted [her] [s]upervisors to explain the discrepancies regarding [her] eligibility for a promotion[,] [t]hey had one explanation and the Civil Service Commission had a different explanation." She claims that "[s]hortly after that the position renumbering issue came out and [she] requested that the [CWA] help [her] navigate and understand

how once again as soon as [she] was eligible for a promotion 'new rules' . . . now apply, making it impossible for [her] to have the opportunity for any monetary or experiential gain despite [her] many years of experience." Freeman contends that the statute of limitations is inapplicable to "[t]he November 1 meeting with CWA which resulted in no action from them" and "the retaliatory behavior of Treasury employees after they learned of [her] questioning the position renumbering on November 29" because both occurred after June 5, 2018. She claims that "Jackson was given the email responses [she] received from the Civil Service Commission" and that Jackson "did NOT" contact her to request additional information such that his email to the contrary "is untrue." Freeman maintains that "[CWA] did not exercise reasonable care and diligence in investigating, processing and presenting [her] grievance" and "[t]heir conduct towards [her] was 'in bad faith' because they are presenting information . . . that is untrue . . . ." Finally, Freeman contends that "[t]he occurrences of November 29<sup>th</sup> when [she] was retaliated against by Yvette Debronzo with her harassment and humiliation tactics were never addressed . . . ."

The Public Employment Relations Commission (Commission or PERC) has authority to issue a complaint where it appears that the 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. I find the following facts:

Freeman is employed by the State within the Department of Treasury's (Treasury) Unclaimed Property Administration (UPA) as a Technical Assistant 1, Treasury. The applicable collective negotiations agreement (CNA) extends from July 1, 2011 through June 30, 2015. The State and CWA reached a successor memorandum of agreement (MOA) that extends from July 1, 2015 through June 30, 2019. CWA is the majority representative for Freeman's title. See 2011-2015 CNA, Art. 1, Appendix 4.

Article 3 of the parties' expired 2011-2015 CNA, entitled "Civil Service Rules," provides:

The administrative and procedural provisions and controls of Civil Service Law and the Rules and Regulations promulgated thereunder, are to be observed in the administration of this Agreement, except to the extent that this Agreement pertains to subjects not therein contained or where this Agreement is contrary to, or in conflict with such provisions and controls and deviation from such rule or control is statutorily permitted. Nothing herein shall be construed to deny any individual employee his rights under the Civil Service Law or Regulations. This Article does not apply to the unclassified service.

Article 4 of the parties' expired 2011-2015 CNA, entitled "Grievance Procedure," specifies the parties' negotiated grievance procedure. Article 5 of the parties' expired 2011-2015

CNA, entitled "Discipline," mandates that discipline may only be imposed for "just cause" and specifies the parties' negotiated procedure for the imposition and appeal of both major and minor disciplinary action. Article 7 of the parties' expired 2011-2015 CNA, entitled "Position Reclassification and Reevaluation Reviews," specifies that "in accordance with applicable Civil Service Rules and Regulations, employees "may initiate requests for position reclassification" and/or "the reevaluation of a job classification." Article 12 of the parties' expired 2011-2015 CNA, entitled "Promotion," specifies that "[p]romotion qualifications and procedures for permanent career service employees are governed by the Civil Service Commission pursuant to Statute and Rules and Regulations promulgated thereunder."

Freeman was hired by the State in the Department of Treasury on June 21, 1999. She was promoted on May 1, 2005 to the title, Technical Assistant 1, Treasury, in which she continues to work. In 2018, the Civil Service Commission renumbered the Technical Assistant Treasury title series such that Freeman's title - Technical Assistant 2, Treasury - became Technical Assistant 1, Treasury. However, there is no allegation that Freeman's compensation or job duties were changed.

Freeman claims that in 2007 she took a Civil Service examination for a promotional title and scored second on the eligibility list, but was not promoted, while others who placed

below her on the list were promoted. Freeman also claims that she has been doing the work of a Claims Investigator since 2009, despite the fact that she is not in that title or being compensated appropriately. From 2007-2017, Freeman sought redress for these alleged infractions in various forums including Treasury and UPA administration; Treasury's human resources, affirmative action, and employee relations offices; CWA; the Equal Employment Opportunity Commission (EEOC); the Employee Advisory Service; the Civil Service Commission; the New Jersey Division on Civil Rights; and federal court. To date, it appears that none of her actions have been successful.

On July 17, 2018, Treasury received an email from the Civil Service Commission announcing that the Technical Assistant Treasury title series was being "renumbered."

On September 14, 2018, CWA 1033 Staff Representative John Warren (Warren) sent an email to Treasury officials Mikayla Ridolfino (Ridolfino) and Adam Stevens (Stevens) inquiring about the Technical Assistant Treasury title series renumbering.

On September 17, 2018, Ridolfino sent an email to Warren and Stevens confirming that the Civil Service Commission "has engaged in an ongoing effort to renumber State title series so that their numbers consistently reflect the levels of the series." Ridolfino noted that Treasury had not yet notified impacted employees, but would do so "once we . . . make these numbering

changes in the employees' histories." In another email on the same date, Ridolfino confirmed that the renumbering would have no financial impact on employees.

Freeman claims that on October 3, 2018 she sent a message to CWA representatives Gaye Palmer (Palmer) and Jackson regarding her concerns about the renumbering of her title.

On October 17, 2018, Freeman forwarded a 2019 ePAR comment email from Treasury to Palmer and Jackson, asking them to "explain the (2) emails I sent . . . on 10/3/2018" and specifying that she "would like to sit down . . . and go over the PromoApp email that was sent to [her] on March 1, 2017 for Promotional Announcement: Technical Assistant 1 Treasury . . . and the ePar."

Later on October 17, 2018, Freeman forwarded a 2017 promotional announcement email from Treasury to Palmer and Jackson, stating that she "[h]ope[d] to meet with the two of you concerning this email."

From October 24-30, 2018, Freeman exchanged emails with CWA 1033 Staff Representative Brian Powers (Powers), Palmer, and Jackson in order to schedule a meeting for November 1, 2018.

On November 1, 2018, Freeman met with Jackson and Powers.

On November 5, 2018, Jackson sent an email to Powers and Palmer stating that he "did agree to contact the [Civil Service Commission] once Freeman provided [him] with the names and contact information of the 2 people she spoke with at the [Civil

Service Commission] who advised her that it was actually Treasury who requested the title change not the [Civil Service Commission].” Jackson also stated that “[w]hen [he] asked [Freeman] (twice) if she could get [him] the names she advised [him] that she would.”

### **Statute of Limitations**

N.J.S.A. 34:13A-5.4(c) establishes a six-month statute of limitations period for the filing of unfair practice charges.

The statute provides in a pertinent part:

[N]o complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such a charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

In Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329, 337-338 (1978), the New Jersey Supreme Court explained that the statute of limitations was intended to stimulate litigants to prevent the litigation of stale claims, and cautioned that it would consider the circumstances of individual cases. The Court noted that it would look to equitable considerations in deciding whether a charging party slept on its rights.

Freeman filed her unfair practice charge on December 5, 2018. Any alleged unlawful conduct by the State and/or CWA before June 5, 2018 could not be the subject of a complaint under our Act unless Freeman was equitably “prevented” from filing a

timely charge. No facts suggest that she was prevented from filing a charge within the statutory period. Accordingly, I dismiss any/all allegations specified in the charge from June 21, 1999 through June 4, 2018 (i.e., six months before the charge was filed). See Somerset Cty., D.U.P. No. 2018-5, 44 NJPER 252 (¶71 2018).

### **Claims Against the State**

Freeman alleges that the State violated section 5.4a(1-7) of the Act. Her allegations against the State center on not being selected for promotion; working out-of-title; having her title re-classified/renumbered; and being subjected to retaliation (i.e., disciplinary action, harassment, and/or a hostile work environment). Section 5.3 of the Act guarantees public employees the right to form, join, and assist an employee organization or to refrain from doing so. Section 5.4a of the Act makes it an unfair practice for a public employer to interfere with this right or to discriminate against an employee for engaging in those activities protected by the Act.

Freeman, as a State employee within the classified service, is subject to the Civil Service Act, N.J.S.A. 11A:1-1, et seq., and related regulations, N.J.A.C. 4A:1-1.1, et seq. See 2011-2015 CNA, Art. 3. Accordingly, the promotional (N.J.S.A. 11A:4-1 thru -16; N.J.A.C. 4A:4-1.1 thru -7.12) and classification (N.J.S.A. 11A:3-1 thru -8; N.J.A.C. 4A:3-1.1 thru -5.10)



processes applicable to Freeman are governed by Civil Service statutes and regulations. With respect to promotion, Freeman's employer is permitted to "[a]ppoint one of the top three interested eligibles (rule of three) from an open competitive promotion list . . . ." N.J.A.C. 4A:4-4.8(a)3. With respect to re-classification/renumbering of a title, the Civil Service Commission "shall assign and reassign titles" (N.J.S.A. 11A:3-1) and "may provide for movement, including promotion, of employees from [the competitive] division to the [noncompetitive] division" (N.J.S.A. 11A:3-2). If Freeman was dissatisfied with the results of any promotional process or re-classification/renumbering of her title, it was incumbent upon her to file an appeal with the Civil Service Commission. See, e.g., N.J.A.C. 4A:2-1.1 ("Filing of appeals"); N.J.A.C. 4A:3-3.9 ("Appeal procedure"); N.J.A.C. 4A:4-6.3 ("Examination and selection appeals").

Freeman has not alleged facts indicating that the State has engaged in conduct that violates our Act or would have a tendency to interfere with protected rights. Further, there is no evidence that she was ever subject to disciplinary action. Freeman claims that she was passed over for promotion and/or denied the opportunity to apply for a promotional position. Even assuming the facts she alleges are true, I find that they do not reveal a nexus between the State's conduct and Freeman's exercise

of any protected activity.<sup>3/</sup> Moreover, if the alleged retaliation, harassment, and/or hostile work environment is based upon Freeman's race, creed, color, etc., her allegations may constitute unlawful employment practices within the meaning of the New Jersey Law Against Discrimination but do not warrant the issuance of a complaint. See N.J.S.A. 10:5-1, et seq.; State of New Jersey (Dep't of Human Services), D.U.P. No. 97-12, 22 NJPER 333 (¶27173 1996); Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶20112 1989). The Commission lacks jurisdiction to hear this charge where it is not otherwise interrelated with an allegation of an unfair practice. Accordingly, I dismiss Freeman's 5.4a(1) and (3) allegations.

Freeman's 5.4a(2), (4), and (7) claims are unsupported. No facts were alleged that the State sought to dominate or interfere with the formation, existence, or administration of any employee

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3/ In Bridgewater Twp. v. Bridgewater Public Works Ass'n, 95 N.J. 235, 244-246 (1984), the New Jersey Supreme Court upheld the Commission's standard for determining whether an employer's action violates 5.4a(3) of the Act. The charging party must prove by a preponderance of the evidence on the entire record that protected activity was a substantial or motivating factor in the employer's adverse decision. This may be done by direct or circumstantial evidence which demonstrates all of the following: (1) the employee engaged in protected activity under the Act; (2) the employer knew of this activity; and (3) the employer was hostile toward the exercise of the protected activity. Protected activity in this context refers to conduct by public employees that implicates their right under the Act "to form, join and assist any employee organization or to refrain from any such activity . . . ." N.J.S.A. 34:13A-5.3.

organization; no facts support the allegation that the State discharged or discriminated against Freeman based upon the filing or signing of an affidavit, petition, or complaint under the Act; no facts were alleged that the State violated any of the Commission's rules or regulations. Accordingly, I dismiss Freeman's 5.4a(2), (4), and (7) allegations.

Freeman lacks standing to assert a 5.4a(5) violation of the Act. A 5.4a(5) violation occurs when an employer fails to negotiate an alteration of a mandatory subject of negotiations with the majority representative; knowingly refuses to comply with the terms of the collective negotiations agreement; or refuses to process grievances presented by the majority representative. The employer's duty to negotiate in good faith runs only to the majority representative, not to individual unit members. New Jersey Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980) aff'd NJPER Supp.2d 101 (¶85 App. Div. 1981); Union Cty. Ed. Services Comm'n and Westlake Ed. Ass'n, D.U.P. 2000-13, 26 NJPER 160 (¶31062 2000); Camden Cty. Highway Dep't., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984). Accordingly, I dismiss Freeman's 5.4a(5) allegation.

Freeman also lacks standing to assert a 5.4a(6) violation of the Act. A 5.4a(6) violation occurs when an employer refuses to reduce a negotiated agreement with the majority representative to writing and execute such an agreement. The employer's obligation

runs only to the majority representative, not to individual unit members. N.J. Transit and ATU, H.E. No. 89-26, 15 NJPER 248 (¶20100 1989), aff'd in pt., P.E.R.C. No. 89-135, 15 NJPER 419 (¶20173 1989). Accordingly, I dismiss Freeman's 5.4a(6) allegation.

### **Claims Against CWA**

Freeman alleges that CWA violated section 5.4b(1-5) of the Act. Her allegations against CWA center on being provided ineffective assistance with filing Civil Service appeals related to promotion and/or re-classification/renumbering of her title and failure to respond in a timely fashion after a meeting on November 1, 2018.

Section 5.3 of the Act provides that "[a] majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership." The Supreme Court of the United States has held that "[a] breach of the statutory duty of fair representation occurs when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190 (1967). New Jersey courts and the Commission have adopted the Vaca standard in deciding fair representation cases

arising under the Act. See Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409, 427-428 (1970); Belen v. Woodbridge Twp. Bd. of Educ., 142 N.J. Super. 486, 491 (App. Div. 1976); Saginario v. Attorney General, 87 N.J. 480 (1981); 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); OPEIU Local 133, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

In examining a duty of fair representation claim, the majority representative must be afforded a wide range of reasonableness in serving the unit it represents. PBA Local 187, P.E.R.C. No. 2005-78, 31 NJPER 173, 175 (¶70 2005) (citing Belen, 142 N.J. Super. at 490-491). For example, the duty of fair representation does not require a union to file every grievance a unit member asks it to submit. Id. at 174 (citing Carteret Ed. Ass'n, P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997)). Rather, in handling grievances, unions must exercise reasonable care and diligence in investigating, processing, and presenting grievances; make a good faith determination of the merits of a grievance; and grant unit members equal access to the grievance procedure and arbitration for similar grievances of equal merit. Middlesex Cty. (Mackaronis), P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. 91 N.J. 242 (1982). "Mere negligence, poor judgment, or ineptitude in grievance handling" alone do not

suffice to prove a breach of the duty of fair representation.

Id. Unions are entitled to a wide range of reasonableness in determining how to best service their members. Council of N.J. State College Locals (Dusenberry), D.U.P. No. 2002-1, 27 NJPER 342 (¶32122 2001); Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953). Unions are not obligated to pursue arbitration of every grievance. New Jersey Turnpike Auth. (Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp.2d 101 (¶85 App. Div. 1981) (union's decision not to arbitrate was based on good faith belief that grievance lacked merit); Carteret Ed. Ass'n (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Fair Lawn Ed. Ass'n. (Solomons), P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984) (no violation where union in good faith refused to take grievance to arbitration since it lacked merit); New Jersey Turnpike Employees Union, Local No. 194 (Kaczmarek), P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) (no breach of the duty of fair representation where the union decided that it could not win in arbitration).

The facts indicate that CWA did not breach its duty of fair representation to Freeman. From 2008-2018, CWA representatives met and communicated with Freeman on multiple occasions; filed grievances and communicated with the State on Freeman's behalf on multiple occasions; assisted Freeman with Civil Service appeals

on multiple occasions; retained an attorney to meet with and assist Freeman related to EEOC and Civil Service matters; and engaged both national and area directors to assess and respond to Freeman's complaints/concerns on multiple occasions. Moreover, CWA does not believe it has any contractual obligation to file/pursue Civil Service appeals on Freeman's behalf or to respond to Freeman's complaints/concerns within a specified period. See 2011-2015 CNA, Arts. 3-5, 7, 12.

Freeman's charge only establishes that she disagrees with CWA's view of its contractual obligations and role within a Civil Service jurisdiction. No facts suggest that CWA interpreted the CNA in a bad faith, discriminatory, or arbitrary manner. Even assuming that the facts Freeman alleges are true, I find that they do not establish a breach of the duty of fair representation. At best, Freeman's charge could support a finding that CWA and/or its representatives were negligent; as discussed above, mere negligence is insufficient to establish a viable claim. Accordingly, I dismiss Freeman's 5.4b(1) allegation.

Freeman's 5.4b(2), (4), and (5) claims are unsupported. No facts were alleged that CWA interfered with, restrained, or coerced the State in the selection of its representative for the purposes of negotiations or the adjustment of grievances; no facts were alleged that CWA refused to reduce a negotiated

agreement to writing and to sign such agreement; no facts were alleged that CWA violated any of the Commission's rules or regulations. Accordingly, I dismiss Freeman's 5.4b(2), (4), and (5) allegations.

Freeman lacks standing to assert a 5.4b(3) violation of the Act. A 5.4b(3) violation occurs when a majority representative refuses to negotiate in good faith with an employer concerning terms and conditions of employment. The majority representative's duty to negotiate in good faith runs only to the employer, not to individual unit members. Council of N.J. State College Locals (Roman), D.U.P. No. 2015-10, 41 NJPER 497 (¶154 2015), aff'd P.E.R.C. No. 2015-76, 42 NJPER 33 (¶8 2015); State of New Jersey (Juvenile Justice), 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); CWA Local 1032 (Tamburo), D.U.P. No. 98-32, 24 NJPER 245 (¶29117 1998); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978). Accordingly, I dismiss Freeman's 5.4b(3) allegation.



**ORDER**

The unfair practice charge is dismissed.

/s/ Jonathan Roth  
Jonathan Roth  
Director of Unfair Practices

DATED: July 10, 2019  
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 July 22, 2019.**