

D.U.P. NO. 99-2

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

In the Matter of

TEAMSTERS LOCAL 97,

Respondent,

-and-

Docket No. CI-97-58

SAKIYNA ZAKIYYAH MUHAMMAD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Sakiyna Muhammad, a former employee of the University of Medicine and Dentistry of New Jersey against Teamsters Local 97, her majority representative. The Director finds that Muhammad's allegations, even if true, would not constitute a breach of the duty of fair representation. He finds that Local 97 did file her grievance and represented her at an arbitration hearing contesting her termination. By this conduct, the union exercised reasonable care and diligence in investigating and processing her grievance.

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Appearances:

For the Respondent,
Cohen, Weiss & Simon, attorneys
(Susan J. Panepento, of counsel)

For the Charging Party,
Dan Solomon Smith, attorney

REFUSAL TO ISSUE COMPLAINT

On March 13, 1997 and May 14, 1998, Sakiyna Muhammad filed an unfair practice charge and an amended charge against her majority representative, Teamsters Local 97.^{1/} Muhammad was an employee of the University of Medicine and Dentistry of New Jersey ("University") from 1989 through April 1996. Muhammad alleges that the Teamsters violated 5.4b(1), (3), (4) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

^{1/} On March 30, 1998, we wrote to the parties advising them of our intent to dismiss the original charge and inviting their responses. Muhammad responded by filing an amendment to her original charge on May 14, 1998.

("Act")^{2/} by making misrepresentations to her and by its handling of grievances concerning her employment and termination from the University.

The Commission 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-5.4c; 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. Based upon the following, I find that the Complaint issuance standard has not been met.

Muhammad alleges that in September 1995, she approached Teamster Business Agent Joan Porter about filing grievances and intervening in problems Muhammad was having with other University employees. She further alleges that in November 1995 Porter assured her that a grievance would be filed, but, Muhammad asserts, no grievance was filed. Muhammad does not state when she realized that a grievance had not been filed. From September 1995 through April

^{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; (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, and (5) Violating any of the rules and regulations established by the commission.

1996, Muhammad suffered from major incapacitating depression disorder which affected her ability to work and pursue her grievances. Between 1995 and 1996, Muhammad exhausted all accumulated sick leave and was granted additional medical leaves of absence and extensions. On April 26, 1996, the University refused to extend her leaves, and, when she did not return to work, terminated her for failing to return to work.

On July 1, 1996, Local 97 filed a grievance complaining that the University had failed to notify it of the termination, in violation of the agreement between the University and Local 97. Muhammad alleges that she was unable to find out from Local 97 whether a grievance had been filed. Muhammad alleges that on September 30, 1996, a union representative rudely prevented her from speaking at a meeting with UMDNJ managers. Local 97 denies this.

At the time the charge was filed on March 13, 1997, Muhammad incorrectly believed that Local 97 had failed or refused to file a grievance appealing her termination. However, documents show that a grievance was filed on July 1, 1996, and that on October 10, 1996, Local 97 requested that the Commission appoint an arbitrator to hear the grievance on the "unjust termination of Sakiyna Muhammad." (PERC Request for...Panel of Arbitrators, Docket No. AR-97-241, dated October 10, 1996). At Local 97's request, and with Muhammad's agreement, this unfair practice charge was held in abeyance pending the conclusion of arbitration. On August 8, 1997, the appointed arbitrator conducted a hearing. Muhammad attended the

proceeding and Local 97 represented her. The arbitrator considered both the substantive basis for the termination as well as one procedural issue. On September 12, 1997, the arbitrator issued a binding arbitration award, upholding the termination. On September 24, 1997, Local 97 sent Muhammad a copy of the arbitrator's decision.

I find that the allegations, even if true, do not constitute unfair practices.

The initial charge alleges that union representatives engaged in improper conduct in September and December 1995, April 1996 and prior to November 14, 1996.^{3/} As noted above, the charge was not filed until March 13, 1997. The amendment to the charge reiterates the complaints about the conduct in September through December 1995. The allegations enumerated in the charges are untimely. Muhammad knew of the Teamsters' actions on those dates, yet did not file the initial charge until March 13, 1997.

The Act has a six month statute of limitations. N.J.S.A. 34:13A-5.4(c) states that:

no 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 charge in which event the 6 months period shall

^{3/} Muhammad alleges in the charge that Porter was aware prior to September 30 and November 14, 1996 that she (Muhammad) was being subjected to unwarranted discipline and other unspecified "unfounded atrocities." Charging party does not specify any incident occurring on either November 13 or 14, 1996, which could be considered timely filed in relation to this unfair practice charge.

be computed from the day he was no longer so prevented.^{4/}

The Legislature included a six month statute of limitations in the Act to prompt charging parties to file charges expeditiously and to prevent the litigation of stale claims. The Legislature provided only one exception to the statute and that was under circumstances where a party is prevented from filing a charge. City of Margate, P.E.R.C. No. 94-40, 19 NJPER 572 (¶24270 1993). Equitable considerations are relevant when determining if a person has been "prevented" from filing a timely charge and should be weighed against the Legislature's objectives in imposing a limitations period. In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), the New Jersey Supreme Court described how someone is prevented from filing a charge:

The term "prevent" may in ordinary parlance connote that factors beyond the control of the complainant have disabled him from filing a timely complaint. Nevertheless, the fact that the Legislature has in this fashion recognized that there can be circumstances arising out of an individual's personal situation which may impede him in bringing his charge in time bespeaks a broader intent to invite inquiry into all relevant considerations bearing upon fairness of imposing the statute of limitations. Cf. Burnett v. N.Y. Cent. R.R., supra, 380 U.S. at 429, 85 S. Ct. at 1055, 13 L.Ed.2d at 946. The question for decision becomes whether, under the circumstances

^{4/} Cases interpreting this subsection are Piscataway Township Teachers Association, NJEA (Abbamont), D.U.P. No. 90-10, 16 NJPER 162 (¶21066 1990); N.J. Turnpike Employees Union Local 914, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

of this case, the equitable considerations are such that appellant should be regarded as having been "prevented" from filing his charges with PERC in timely fashion.
[Id. at 340]

In that case, the diligent pursuit and timely filing of a charge, although in an inappropriate forum, justified the tolling of the statute of limitations as the plaintiff "at no time 'slept on his rights.'" Kaczmarek, 77 N.J. at 341.

Here, Muhammad claims that the Teamsters violated the duty of fair representation by failing to promptly pursue her claim from September through December, 1995 and misleading her during that period into believing that they were pursuing her grievance. Her charge was not filed until March 1997. In her May 1998 amendment, Muhammad asserts that her major depression disorder prevented her from filing the charge earlier. Muhammad identified the period of her incapacity as extending from September 1995 through April 1996. In order to be timely under this reasoning, Muhammad had to file her charge within six months of April 1996. Muhammad attached a copy of claims she filed against the University in August 1996 for damages for harassment and wrongful termination. Also attached is a copy of a letter she wrote to Porter on July 20, 1996, complaining about the harassment she had suffered on the job and appealing for assistance. Muhammad states, in part:

I have been consulting with you regarding Cathy Kuttner's behavior toward me since September 1995, until approximately the first two weeks of May 1996. Your advice prior to my returning to work on December 4, 1995, 'Let me know if Ms. Kuttner gives you any more trouble.' I did

inform you, Ms. Porter, that Cathy Kuttner started harassing me by the third day I was back to work. I dealt with her harassment as best as I could. Then, by Friday, February 9, 1996, I was severely harassed by both Cathy Kuttner and Neelaxi Bhatt, coordinator of Geopsy's senior day care program. On Friday, April 12, I was again severely harassed by Kuttner.

She argues that the statute of limitations should be extended and her charge considered timely because she was prevented from filing it due to incapacity caused by depression. In the above letter Muhammad states that from December 1995 to April 1996, she consulted with the Teamsters and believed that the Teamsters either neglected or were unsuccessful in ameliorating her problems. Even if we accept the notion that her illness between September 1995 and April 1996 tolled the statute, Muhammad was able to file a charge by late April 1996. Accordingly, I find that the operative date for the statute to begin is not later than April 1996, the date Muhammad identified as the end of her period of incapacity.^{5/} In Bor. of Harrington Park, D.U.P. No. 91-14, 17 NJPER 12 (¶22008 1990) the Director dismissed a charge filed more than eight months after the employee was terminated, finding that neither the filing of an unemployment claim nor the charging party's preoccupation with family illness warranted the relaxation of the six-month statute of limitations. Accordingly, allegations in the charge concerning events occurring prior to July 1996 are beyond the Commission's statute of limitations, and are therefore dismissed.

^{5/} Even if the operative tolling date is July 20, 1996, the date of Muhammad's letter to Porter, the charge is still untimely.

Further, I find that Local 97 did not breach its duty to fairly represent Muhammad. A majority representative breaches its duty of fair representation only when its conduct toward a unit member is "arbitrary, discriminatory, or in bad faith." Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1976). A union should exercise reasonable care and diligence in investigating and processing each grievance; it should exercise good faith in determining the merits of the grievance; and it should afford equal access to the grievance procedure and arbitration for grievances of equal merit. OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983). The U.S. Supreme Court has held that claims of a breach of the duty of fair representation, "...carr[y]...the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." Amalgamated Assn. of Street, Electric, Railway and Motor Coach Employees of American v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971). And the National Labor Relations Board has held that where a majority representative exercises its discretion in good faith, proof of mere negligence, standing alone, does not suffice to prove a breach of the duty of fair representation. Service Employees International Union, Local No. 579, AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977); Printing and Graphic Communication, Local No. 4, 249 NLRB No. 23, 104 LRRM 1050 (1980), reversed on other grounds 110 LRRM 2928 (1982).

Although Muhammad alleges that no grievance was filed, she acknowledges that Local 97 represented her at an arbitration hearing

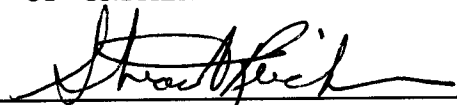
contesting her termination. Thus, the union has exercised reasonable care and diligence in investigating and processing Muhammad's grievance. OPEIU Local 153. The remaining allegations, that Local 97 representatives silenced Muhammad during a meeting and did not respond to her requests for information, even if true, do not rise to the level of conduct which is so arbitrary, discriminatory or in bad faith as to constitute an unfair practice within the meaning of the Act. Accordingly, I dismiss these allegations.

The charge also alleges that the Teamsters violated provisions b(3) and (4) of the Act. A union's duty of good faith negotiations and duty to sign a written agreement are owed to the employer not individual unit members. Individual employees do not have standing to raise these issues. Council of New Jersey State College Locals, D.U.P. No. 84-8, 6 NJPER 531 (¶11271 1980). Muhammad has not alleged any facts which support the b(3) or b(4) allegations. Accordingly, I dismiss these allegations. I also dismiss the b(5) allegation because there are no facts alleged which demonstrate that a Commission rule or regulation has been violated. Since the Commission's complaint issuance standard has not been met, I decline to issue a complaint on the allegations of this charge.

ORDER

The charge is dismissed.^{6/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: August 25, 1998
Trenton, New Jersey