

D.U.P. NO. 96-23

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

In the Matter of

HOSPITAL PROFESSIONALS AND ALLIED
EMPLOYEES OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-96-39

MARY GRACE ELISABETH BARRETT,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on Mary Grace Elisabeth Barrett's allegations that Hospital Professionals and Allied Employees of New Jersey, Local 5089 inadequately represented her during a termination hearing when its representative recommended that she resign.

The Director finds that it is not an unfair practice for an employee representative to recommend resignation as an alternative to termination. There was no allegation that the HPAE representative misrepresented the options available to Barrett. The Director dismisses the balance of Barrett's allegations as untimely.

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Appearances:

For the Respondent,
John DiNicola, Staff Representative

For the Charging Party,
Mary Grace Elisabeth Barrett, pro se

REFUSAL TO ISSUE COMPLAINT

On December 12, 1995, Mary Grace Elisabeth Barrett filed an unfair practice charge with the Public Employment Relations Commission against the Hospital Professionals and Allied Employees of New Jersey. Barrett alleges that HPAE violated subsections 5.4(b) (1), (3) and (5)^{1/} of the New Jersey Employer-Employee

^{1/} 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. (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. (5) Violating any of the rules and regulations established by the commission."

Relations Act, N.J.S.A. 34:13A-1 et seq., by inadequately representing her from October 1994 until her resignation in September 1995.

Barrett was employed by the University of Medicine and Dentistry's University Hospital. While employed, she was a member of HPAE Local 5089. Barrett states that HPAE declined to arbitrate a grievance over a written warning that was issued to her in October 1994. She alleges that HPAE did nothing regarding October, 1994 reports of a situation involving "sexual harassment, extortion and death threats", although Barrett does not state what action she sought HPAE to take. Barrett also alleges that HPAE representatives did not reschedule second step grievance meetings in November 1994 and May 1995.

HPAE states that it processed Barrett's October 1994 grievance over a written reprimand, but was contractually barred from arbitrating any grievances concerning written reprimands. HPAE contends that Barrett's complaints regarding sexual harassment, extortion and death threats were investigated by the university's security department and found to be baseless. HPAE states that Barrett was a grievance representative for its Local 5089 for most of her employment and that as such, was able to file grievances on behalf of both herself and her co-workers through all steps of the grievance procedure, including arbitration.

Barrett filed this charge on December 12, 1995. All of the above-cited incidents occurred over six months before the charge was filed and are therefore untimely. N.J.S.A. 34:13A-5.4(c).

Barrett alleges that HPAE Staff Representative John DiNicola violated the Act on September 26, 1995 when "previous to [a] termination conference with [the] nurse manager, he stated [that] the record didn't warrant arbitration." Barrett alleges that Local 5089 Staff Representative Dominic Tomasello violated the Act by siding with the nurse manager, not examining the record and recommending her resignation.

HPAE states that DiNicola fully apprised Barrett of her rights and options concerning her prospective termination in a phone conversation initiated by Barrett shortly before her resignation. HPAE contends that DiNicola did not bar Barrett from the grievance procedure or encourage her to accept any discipline she may encounter as a result of her prospective termination by UMDNJ. HPAE states that Barrett was represented by Tomasello at a September 1995 meeting during which Barrett chose to resign her position at University Hospital. HPAE states that Tomasello did not refuse to represent Barrett or bar her from the grievance procedure if she chose to contest her threatened termination by UMDNJ.

Barrett's allegations concerning HPAE's conduct regarding her termination are timely. However, they do not appear to rise to the level of an unfair practice. Barrett's allegations that HPAE inadequately represented her fall under subsection 5.4(b)(1) of the

Act,^{2/} which prohibits employee organizations, their representatives or agents from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the act.

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances:

In the specific context of a challenge to a union's representation in processing a grievance, the United States Supreme Court has 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, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190 (1967) (Vaca).

A union should attempt to exercise reasonable care and diligence in investigating, processing and presenting grievances; it should exercise good faith in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. Mackaronis and Middlesex Cty. and NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd. App. Div. Docket No. A-1455-80 (4/1/82), certif. den. 91 N.J. 242 (1982); New

^{2/} Barrett also alleges that HPAE violated subsections 5.4(b)(3) and (5) of the Act. However, she has not alleged any facts showing that HPAE refused to negotiate in good faith with the employer. Barrett has also not alleged facts indicating the HPAE violated any of the Commission's rules and regulations. Therefore, I dismiss the allegations that HPAE violated subsections 5.4(b)(3) and (5) of the Act.

Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) ("Local 194"); and In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

Barrett alleges that HPAE committed an unfair practice when its representative stated that the record did not warrant arbitration of her termination. An employee representative is not obligated to bring every grievance to arbitration, but must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca v. Sipes. An employee representative fulfills its statutory obligation to represent employees when it evaluates grievances on their merits and makes a judgment on whether arbitrating the issue is in the interests of its unit members as a whole. Employee organizations are entitled to a wide range of reasonableness in determining how to best service all of their members. New Jersey Transit Bus Operations and Amalgamated Transit Union Division 819 (Chimbumu) D.U.P. No. 95-23, 21 NJPER 54 (¶26038 1995); Essex-Union Joint Meeting and Automatic Sales, Servicemen and Allied Workers, Local 575, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991); Jersey City Bd. of Ed., D.U.P. No. 93-7, 18 NJPER 455 (¶23206 1992). Based upon the above standards, it was not an unfair practice for HPAE representative DiNicola to evaluate the record and conclude that Barrett's termination did not warrant arbitration.

Barrett also contends that HPAA representative Tomasello violated the act during her termination conference when he sided with the nurse-manager, did not examine the record and recommended that she resign. Barrett does not dispute that she resigned in the face of a pending termination. It is not an unfair practice for an employee representative to recommend resignation as an alternative to termination. There is no allegation that Tomasello misrepresented the options available to Barrett and thereby acted discriminatorily or in bad faith in representing her interests. International Brotherhood of Teamsters Local 97 and Donell Barker, D.U.P. No. 96-15, 22 NJPER ____ (¶____, 1996); UTU Local 33 and Earlie Gresham, D.U.P. No. 93-27, 19 NJPER 135 (¶24067 1993).

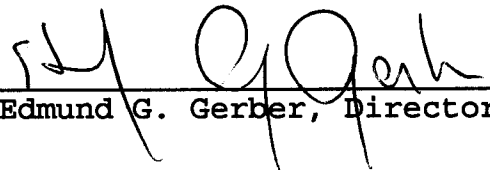
Barrett also contends that Tomasello did not examine the record at her termination conference. This general allegation does not rise to the level of an unfair practice. Additionally, Barrett states that DiNicola decided not to arbitrate her discharge because the record did not warrant arbitration. Therefore, an HPAA representative did examine the record. Barrett's unhappiness with the effects of that examination - the union's decision not to arbitrate and its recommendation that she resign - does not mean that the HPAA's actions violated the act.

Finally, Barrett alleges that Tomasello sided with the nurse-manager at her termination conference. However, Barrett does state how this allegation constitutes a violation of the act or of the union's duty of fair representation. If Tomasello's siding with

the nurse manager was part of his assessment of the relative merits of her case against the proposed termination, and that assessment led to his recommendation that she resign rather than be terminated, then this action is also not an unfair practice.

Therefore, I find that the Commission's complaint issuance standard has not been met and I am not inclined to issue a complaint on the allegations of this charge.^{3/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 18, 1996
Trenton, New Jersey