

D.U.P. NO. 96-16

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,

Respondent,

-and-

Docket No. CI-95-60

ANITA M. BARROW,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Anita M. Barrow against the Council of New Jersey State College Locals. The Director finds that Barrow's allegations regarding the Council's refusal to file an unfair practice charge on her behalf do not amount to an unfair practice under the Act.

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Appearances:

For the Respondent,
Dwyer & Canellis, attorneys
(Brian Miller Adams, of counsel)

For the Charging Party,
Arthur N. Martin, Jr., attorney

REFUSAL TO ISSUE COMPLAINT

On March 3, 1995, Anita M. Barrow, Ph.D. filed an unfair practice charge against the Council of New Jersey State College Locals, AFT/AFL-CIO, alleging that the Council violated subsections 5.4(b)(1), (2), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

^{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. (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

Specifically, Barrow asserts that the Council violated the Act when it refused to file an unfair practice charge against the College for the following:

1. The College's refusal to allow her access to the anthropology department;
2. The College's refusal to provide her the opportunity to teach overload classes in the Spring 1995 semester and;
3. The College's refusal to properly list her as a professor of the visual anthropology theory and method course so that she could teach same on an overload basis.

Barrow claims that the Council's failure to file a charge for her has resulted in severe prejudice to her.^{2/}

According to the Council, it has continuously represented Barrow throughout the years and has filed eight grievances on her behalf, one of which led to the establishment of the Anthropology Department. It asserts that it examined all materials Barrow provided to it and investigated the matters that Barrow wanted a charge filed on. However, the Council made a good faith

1/ Footnote Continued From Previous Page

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."

2/ By January 26, 1996 letter, Barrow appeared to seek to amend her charge; however, said amendment was not served on the other side as required by N.J.A.C. 19:14-1.4. Thus, since the amendment was not perfected under our Rules, it is not considered here.

determination that there was no nexus between the managerial actions complained of and any protected activity by Barrow, and thus declined to file an unfair practice charge.

Specifically, the Council found that there was no campus-wide practice as to faculty access to their offices. In the absence of a uniform practice and any evidence of discriminatory action against Barrow, the Council decided not to pursue the matter through a charge.

Further, the Council determined that the College exercised its managerial prerogative and determined not to offer any overload assignments to Anthropology Department faculty. Rather, the College assigned uncovered courses to adjunct faculty. Accordingly, the Council found that the College's failure to provide Barrow an overload teaching assignment was not in retaliation for protected activity and thus found no basis for filing a charge.

Finally, the Council notes that it filed two grievances for Barrow with respect to the three issues Barrow wanted a charge filed on. The grievances were denied by the College at the step one level and their denial was brought before the Council's Grievance Committee in accordance with the grievance procedure. The Grievance Committee voted not to take Barrow's grievances to arbitration and Barrow was given the opportunity to appeal the Grievance Committee's action to the full Council. While the Grievance Committee and the full Council made a good faith determination that the grievances did not warrant submission to arbitration, the Council notes that Barrow

does not have an absolute right to have her grievances moved to arbitration.

ANALYSIS

N.J.S.A. 34:13A-5.3 provides in part 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.

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). The courts and this Commission have consistently embraced the standards of Vaca in adjudicating such unfair representation claims. See, e.g., Saginario v. Attorney General, 87 N.J. 480 (1981); In re Board of Chosen Freeholders of Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (April 1, 1982), pet. for certif. den. (6/16/82) ("Middlesex County"); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) ("Local 194"); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). [footnote omitted]

We have also stated that 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. Middlesex County; Local 194. All the circumstances of a particular case, however, must be considered before a determination can be made concerning whether a majority representative has acted in bad faith, discriminatorily, or arbitrarily under Vaca standards. [OPEIU Local 153 at 13.]

The U.S. Supreme Court has also held that to establish a claim of a breach of the duty of fair representation, such claim "...carried with it 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); FOP Lodge 94 and Cassidy, P.E.R.C. No. 91-108, 17 NJPER 347 (¶22156 1991). Further, 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).

Here, the charge fails to allege and no showing was made that the Council breached its duty of fair representation. The Council investigated the three matters Barrow wanted an unfair

practice charge filed on. However, it made a good faith determination that there was no nexus between the managerial actions complained of and any protected activity by Barrow and thus, decided not to file an unfair practice charge. This does not amount to discrimination by the Council that is "intentional, severe, and unrelated to legitimate union objectives". Amalgamated Assn. of Street, Electric, Railway, and Motor Coach Employees of America.

In any event, the Council did file two grievances on the issues Barrow raised. When the College denied them, the Council reviewed the grievances, pursuant to its procedures to determine whether arbitration was warranted. This is how it treats all grievances. Although it made a good faith determination not to pursue them to arbitration, this is not a breach of the duty of fair representation. RWDSU, Local 29, D.U.P. No. 94-47, 20 NJPER 268 (¶25134 1994); Jersey City Bd. of Ed., D.U.P. No. 93-7, 18 NJPER 455 (¶23206 1992).

Here, Barrow has failed to allege or present any facts showing conduct by the Council that is "arbitrary, discriminatory, or in bad faith". OPEIU Lodge 153; FOP Lodge No. 74.

Accordingly, I find that the Commission's complaint issuance standards have not been met and I refuse to issue a complaint. N.J.A.C. 19:14-1.5 and 2.1. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: March 8, 1996
Trenton, New Jersey