

D.U.P. NO. 96-10

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

In the Matter of

EMPLOYEES OF PASSAIC COUNTY WELFARE  
ASSOCIATION,

Respondent,

-and-

Docket No. CI-95-19

IRHNE BRADBURY,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge where the Charging Party failed to state facts to support allegations that the Respondent, her majority representative, failed to represent her fairly when she was terminated by her employer.

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Appearances:

For the Respondent,  
Ball, Livingston & Tykulsker, attorneys  
(David Tykulsker, of counsel)

For the Charging Party,  
Irene Bradbury, pro se

REFUSAL TO ISSUE COMPLAINT

On November 1, 1994, Irene Bradbury filed an unfair practice charge against her majority representative, the Employees of Passaic County Welfare Association. Bradbury alleges that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(b)1 and (3)<sup>1/</sup> when it refused to act in her behalf when she was terminated

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<sup>1/</sup> 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. "

by her employer.

The Passaic County Board of Social Services is a civil service employer. The Board had appointed Bradbury provisionally to the position of investigator. On August 5, 1994, Bradbury failed a civil service examination for her position. On August 16, she was told by her supervisor that she was being terminated immediately. That same day, Bradbury contacted the Association's chairman, Bruce James. She alleges that at the time of her termination, an eligibility list had not been promulgated by civil service. Bradbury asserts that James told her that as a provisional employee, she had no rights and therefore he could not help her.

Bradbury alleges that the Association failed to intercede with her employer so that she could keep her job long enough to seek employment elsewhere.

Bradbury attached to the charge copies of two letters that were sent to her by the Association. In a letter of October 3, 1994, James indicated that the Association's executive board had discussed her request for legal representation, but it could not determine that her "claim of being terminated illegally" was correct unless she provided proofs as to her allegation. James also indicated that the Association would not pay for Bradbury's attorney. Rather, if the Association agreed to represent her, the letter indicated she would be represented by a staff attorney.

The second letter, dated October 6, 1995, addresses several complaints raised by Bradbury, including an assertion that the

Association was not responding to her request for representation quickly enough. James indicated that Bradbury had not yet provided the executive board with anything to substantiate her claim that she was illegally terminated. However, he noted that the appeal she filed with the State Department of Personnel had been denied, which suggested to him that there was no basis to her claim that the Board had improperly terminated her.

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 interests 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).

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. \_\_\_ N.J. \_\_\_ (6/16/82), recon. den. (10/5/82); New 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). 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 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).

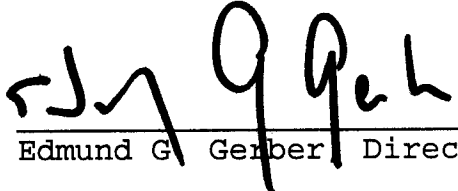
Based upon the factual allegations set forth in the unfair practice charge, it appears that this charge does not meet the Commission's complaint issuance standard. N.J.A.C. 19:14-2.1 and 2.3.

The letters attached to Bradbury's charge indicate that the Association did review her grievance but did not pursue it for a claimed lack of merit. However, Bradbury did not allege facts that,

if true, might show there was merit to her grievance. Under the facts alleged in the charge, the Association's failure to pursue Bradbury's grievance was not arbitrary, discriminatory or in bad faith.

Accordingly, I find that the charging party failed to allege facts that, if true, might constitute an unfair practice. Therefore, I decline to issue a complaint on the allegations of this charge and the charge is dismissed.<sup>2/</sup>

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: October 25, 1995  
Trenton, New Jersey

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<sup>2/</sup> See N.J.A.C. 19:14-2.1 and N.J.A.C. 19:14-2.3.