

P.E.R.C. NO. 2023-020

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL 253

Respondent,

-and-

Docket No. CI-2022-018

CHENICQUA SIMS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the refusal of the Director of Unfair Practices to issue a complaint on an unfair practice charge filed by Chenicqua Sims against the United Brotherhood of Carpenters and Joiners of America, Local 253 (Local 253). The charge alleges that Local 253 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) when its representation of Sims at an arbitration contesting her termination from the Newark Housing Authority did not include presenting evidence of her sexual harassment claim. The Commission dismisses the charge as untimely because it was filed more than six months after Local 253 informed Sims' personal attorney that it would not be proceeding to arbitration on her sexual harassment grievance. The Commission finds that even if the charge were timely filed, Local 253 did not breach its duty of fair representation because the record shows that it exercised reasonable care in investigating the sexual harassment grievance and its decision not to pursue it was based on its good faith evaluation of the merits.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Kroll, Heineman, Ptasiwicz &
Parsons (Raymond G. Heineman, of counsel)

For the Charging Party, Chenicqua Sims, pro se

DECISION

On August 18, 2022, the Charging Party appealed from the August 9, 2022 decision of the Director of Unfair Practices refusing to issue a Complaint on an unfair practice charge she filed. D.U.P. No. 2023-2, 49 NJPER 109 (¶23 2022). On February 16 and March 24, 2022, the Charging Party filed an unfair practice charge and amended charge against her former majority representative, United Brotherhood of Carpenters and Joiners of America, Local 253 (Local 253). The charge alleges that Local 253 violated subsections 5.4b(1) through (5)^{1/} of the New Jersey

^{1/} These provisions prohibit employee organizations, their
(continued...)

Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) when it did not present evidence of alleged sexual harassment of the Charging Party at a March 9, 2022 arbitration hearing contesting her termination from her position as a carpenter at the Newark Housing Authority (NHA).

We incorporate the Director's findings of fact and summarize the pertinent facts as follows. The Charging Party was employed as a carpenter at NHA and represented by Local 253 until her termination on January 6, 2020. On or about May 24, 2019, the Charging Party filed a complaint with the NHA Human Resources Department alleging that she was sexually harassed by a supervisor. After an NHA investigation and hearing, the Charging Party and her supervisor were both issued five-day suspensions. In July 2019, the Charging Party underwent surgery and was away from work while recuperating. In November 2019, the Charging Party filed a grievance challenging the five-day suspension and alleging sexual harassment by her supervisor.

1/ (...continued)
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 representatives for the purpose of negotiations or adjustment of grievances (3) Refusing to negotiate in good faith with a public employers, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in the 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."

On January 6, 2020, the Charging Party sought to return to work on a light duty assignment. NHA determined that no light duty assignment was available and terminated her employment. Following her termination, the Charging Party obtained a doctor's note authorizing her return to full duty work, but NHA did not offer to reinstate her. Local 253 amended the pending grievance concerning the five-day suspension to include the termination. The Charging Party also retained private counsel and filed a New Jersey Law Against Discrimination (NJLAD) complaint against NHA.

Following an April 8, 2020 grievance meeting, Local 253 representatives interviewed eight additional potential witnesses identified by the Charging Party and none of them corroborated that they had witnessed sexual harassment. Local 253 concluded that it could not prevail before an arbitrator on the harassment portion of the grievance. On June 22, 2020, Local 253's attorney emailed the Charging Party's attorney and advised him that Local 253 had determined not to proceed to arbitration over the sexual harassment grievance. On December 3, 2020, Local 253 sent a letter to the arbitrator stating that the arbitration hearing concerns only the grievant's termination and that Local 253 would not be submitting the sexual harassment/discrimination claim to arbitration. The letter was copied to the Charging Party's private attorney for her sexual harassment claim.

On January 29, 2021, February 3, 2021, and March 9, 2022, Local 253 represented the Charging Party in the arbitration hearing contesting her termination. The arbitration decision was issued on September 5, 2022, after D.U.P. No. 2023-2 had issued, but was submitted by Local 253 as an exhibit to its response to the Charging Party's appeal and is part of the record on appeal. The arbitrator noted that the parties stipulated that the arbitration "did not pertain to any claims of discrimination which were subject to a Complaint before the Superior Court of New Jersey." The arbitrator sustained Local 253's grievance, finding that NHA did not have just cause for terminating the Charging Party. The arbitrator ordered that the Charging Party be reinstated immediately, retroactive to August 19, 2020, and be made whole for lost wages and benefits.

On January 13, 2022, the Charging Party's private attorney emailed her advising that he spoke with Local 253's counsel, who represented to him that Local 253 would ask the arbitrator to expand the arbitration to include certain evidence if the Charging Party's NJLAD claim was dismissed. On May 2, 2022, Local 253's counsel filed a letter denying that he had such a conversation with the Charging Party's private attorney.

In D.U.P. No. 2023-2, the Director refused to issue a Complaint on the Charging Party's unfair practice charge because her claims were filed more than six months after Local 253

informed her counsel that it would not include her sexual harassment claim in its arbitration over her termination. The Director found that the charge was therefore untimely under the Act's six-month statute of limitations. N.J.S.A. 34:13A-5.4c. The Director also found that even if the unfair practice charge is considered timely, the Charging Party failed to allege facts showing that Local 253 breached its duty of fair representation or otherwise violated the Act when it decided to arbitrate over her termination and not her sexual harassment claim.

The Charging Party's appeal asserts that Local 253 would not let her present evidence of her sexual harassment during arbitration. She asserts that Local 253's counsel told her that her sexual harassment case was for her private attorney, while Local 253 is only representing her regarding her termination. The Charging Party alleges that her attorney's January 13, 2022 email indicates that Local 253's attorney represented that he would bring her harassment case to arbitration.

Local 253 asserts that the unfair practice charge is untimely because it was filed on February 16, 2022, more than six months after both Local 253's June 22, 2020 and December 3, 2020 correspondences in which the Charging Party's private attorney was informed that Local 253 would not be proceeding to arbitration on the sexual harassment grievance. Local 253 asserts that it investigated the Charging Party's sexual

harassment claims and determined that it could not prevail in arbitration after interviewing eight additional witnesses who could not corroborate the claims.

The Commission has authority to issue a complaint where it appears that a 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. Where the complaint issuance standard has not been met, the issuance of a complaint may be declined. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012). After a careful review of the parties' submissions, we sustain the Director's decision not to issue a Complaint and to dismiss the unfair practice charge.

First, we find that the Director correctly dismissed the Charging Party's claims as untimely. N.J.S.A. 34:13A-5.4c establishes a six-month statute of limitations period for the filing of unfair practice charges. The record demonstrates that on June 22, 2020, Local 253 informed the Charging Party's attorney that it would not proceed to arbitration on her sexual harassment claim because its investigation could not corroborate the claim and it determined it would not prevail in arbitration. Local 253 reiterated its position on December 4, 2020 when it stated that it would only be proceeding to arbitration on the termination claim. The Charging Party was thus on notice, well

over six months prior to her February 16, 2022 unfair practice charge filing date, that Local 253 would not be arbitrating her sexual harassment claim. She knew or should have known the basis for her unfair practice charge by June 22 or December 4, 2020 at the latest, and no facts indicate she was prevented from filing her charge within six months of those dates. See, e.g., Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1978).

Next, we concur with the Director's determination that even if the charge were timely filed, Local 253 did not breach its duty of fair representation by deciding not to pursue her sexual harassment grievance. A breach of the statutory duty of fair representation violates subsection 5.4b(1) of the Act and occurs only when a union's conduct towards a member of the negotiations unit is arbitrary, discriminatory or in bad faith. Vaca v. Sipes, 386 U.S. 171, 191 (1967). The Commission and New Jersey courts have adopted the Vaca standard in deciding fair representation cases arising under the Act. See Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74, 76 (1990); and 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). "A wide range of reasonableness must be allowed a statutory bargaining representative in servicing the unit it

represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." PBA Local 187, P.E.R.C. No. 2005-78, 31 NJPER 173 (¶70 2005) (citing Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953)).

The Commission has held that a union should exercise reasonable care and diligence in investigating, processing, and presenting grievances; and must evaluate the merits of requests for arbitration in good faith. Middlesex Cty. and NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555, 557 (¶11282 1980), aff'd, NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den., 91 N.J. 242 (1982); Carteret Ed. Ass'n, P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997); Camden Cty. College (LaMarra), P.E.R.C. No. 93-90, 19 NJPER 222 (¶24107 1993); Jersey City Medical Center (Shine), P.E.R.C. No. 87-19, 12 NJPER 740 (¶17277 1986).

Here, Local 253 evaluated the merits of the Charging Party's sexual harassment grievance by conducting further investigation. Following a grievance meeting, Local 253 interviewed eight potential witnesses identified by the Charging Party and found that none of them could corroborate her sexual harassment claims. Local 253 determined, based on that investigation, that it would not succeed in arbitrating the sexual harassment grievance and instead proceeded to arbitration only to contest the Charging Party's termination. Notably, Local 253 successfully represented the Charging Party in her termination grievance, achieving her

reinstatement with back pay and benefits. The duty of fair representation does not obligate the union 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); Sussex Cty. Sheriff's Office, P.E.R.C. No. 2021-49, 47 NJPER 527 (¶123 2021); Essex Cty. (Miller), P.E.R.C. No. 2019-16, 45 NJPER 195 (¶50 2018); Passaic Cty. Support Staff Ass'n, P.E.R.C. No. 2015-23, 41 NJPER 169 (¶60 2014). We find the record indicates that Local 253 exercised reasonable care in investigating the Charging Party's grievance and that its determination not to pursue arbitration was based on its good faith evaluation of the merits. Accordingly, Local 253 did not breach its duty of fair representation in violation of 5.4b(1) of the Act.

Finally, we concur with the Director that the Charging Party's allegations did not implicate any potential violations of subsections 5.4b(2) through b(5) of the Act.

Based on all of the above considerations, we affirm the Director's decision not to issue a complaint.

ORDER

The refusal to issue a complaint is sustained. The unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford and Papero voted in favor of this decision. None opposed. Commissioner Voos was not present.

ISSUED: December 15, 2022

Trenton, New Jersey