P.E.R.C. NO. 2002-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EGG HARBOR TOWNSHIP
EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-H-2001-47

DONNA L. ZELIG,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Donna Zelig against the Egg Harbor Township Education Association. The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act by failing to timely advise her of negotiated changes to the collective negotiations agreement governing her terms and conditions of employment with the Egg Harbor Township Board of Education and by misleading her regarding the scope of a grievance regarding changes to the agreement. The Commission finds that the Association did not breach its duty of fair representation in the way it conducted the contract ratification process or pursued the grievance to arbitration.

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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DONNA L. ZELIG,

Charging Party.

Appearances:

For the Respondent, Selikoff & Cohen, P.A., attorneys (Steven R. Cohen, of counsel)

For the Charging Party, Donna L. Zelig, pro se

DECISION

On February 1 and March 14, 2001, Donna Lynn Zelig filed an unfair practice charge and amended charge against the Egg Harbor Township Education Association. The charge, as amended, alleges that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4b(1), (2), (3) and (5),[1/] by failing to timely

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1/ 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of

Footnote Continued on Next Page

advise her of negotiated changes to the collective negotiations agreement governing her terms and conditions of employment with the Egg Harbor Township Board of Education and by misleading her regarding the scope of a grievance regarding changes to the agreement. Specifically, the charging party contends a change in the agreement on salary guide placement for additional college/educational credits for the 1999-2000 school year entitled her to a $1,710 adjustment, but she was never informed of the change. Thus, she was precluded from timely requesting an adjustment and from grieving the Board's failure to adjust her salary for the 1999-2000 school year. She contends the Association discriminated against her by processing a grievance regarding these credits for two other members, including the Association's vice president/chief negotiator, but not her.

On June 26, 2001, a Complaint and Notice of Hearing issued. On July 5, the Association filed an Answer denying the allegations and contending that: (1) the charging party was

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1/ Footnote Continued From Previous Page

negotiations or the adjustment of grievances. (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."

notified of changes to the contract; (2) the charging party failed to attend an Association ratification meeting regarding the contract; and (3) the grievance sought relief for "any other adversely affected employee," not just the two named grievants. The Association also requested the 5.4b(2), (3) and (5) claims be dismissed; it contended that the charging party lacked standing, as an individual, to maintain those claims and that she failed to assert any facts constituting a violation of Commission rules or regulations.

The charging party withdrew her 5.4b(2), (3) and (5) claims at a pre-hearing conference. On August 16 and October 3, 2001, Hearing Examiner Kevin M. St.Onge conducted a hearing. The parties examined witnesses, entered into stipulations, and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On February 11, 2002, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 2002-10, 28 NJPER 143 (¶33048 2002). He found that the charging party did not demonstrate that the Association's circulation of information about the successor contract was arbitrary, discriminatory or in bad faith. The Association treated the charging party the same way, and she had the same opportunities, as other Association members. Thus, he found that the Association did not breach its duty of fair representation.

On February 28, 2002, the charging party filed exceptions. On March 1, the Association filed an answering brief.2/

We have reviewed the record. We adopt and incorporate the Hearing Examiner's findings of fact (H.E. at 3-14) with one minor modification. We disregard the opinion in footnote 6 that the Association should consider using a questionnaire. We now address the exceptions and responses.

1. The charging party contends that the Hearing Examiner erred in finding that increments were only for graduate credits. She contends that increments are for any educational credits beyond a BA degree, plus certain credit for workshops.

The Association responds that the Hearing Examiner did not concern himself with the requirements for salary credit; rather he addressed the Association's reasons for seeking a contractual change.

2/ On March 6, 2002, the charging party filed a reply to the Association's answering brief. The Association filed an application to strike that submission. N.J.A.C. 19:14:7.3(g) prohibits the filing of additional briefs, beyond the brief in support of exceptions and answering brief, except by leave of the Commission. The charging party has not sought leave. In any event, we would deny such a request because the matter has been fully briefed.

We reject this exception. The charging party has not specified what, if any, error the Hearing Examiner made. His findings appear to reflect the fact that the prior contract gave credit only for graduate credits earned after the master's degree and that the contractual limitation was removed.

2. The charging party contends that no documentary evidence substantiates what was said at the union meetings. She also asks if the Association's procedures were appropriate.

The Association responds that the charging party did not rebut the findings concerning the August meeting where 200-250 Association members came to learn about the new contract and the September ratification meeting.

The lack of documentary evidence does not undercut the Hearing Examiner's findings about the steps the Association took to communicate contractual changes to its membership.

3. The charging party asserts that no one stated that employees should submit letters to the Board in order to be included in a grievance seeking salary adjustment under the new contractual language.

The Association responds that the Association did seek relief in the grievance arbitration that included "any other adversely affected employee."

While the charging party's assertion that no one stated that employees should submit letters to the Board may be true, the Hearing Examiner did not err by not making such a finding.

4. The charging party asserts that a "Fact Sheet" did not adequately explain what contract language was being deleted.

The Association responds that the "Fact Sheet" referenced Article 10, paragraph C(3) and that all the charging party had to do was refer to the old contract. It further responds that if the charging party did not understand the sheet, she could have asked an Association representative for an explanation.

We have no basis to find that the "Fact Sheet" was not clear and easily understandable.

5. The charging party asserts that evidence concerning a rough draft should not be considered since it was a rough draft.

The Association responds that the Association's president explained that the document ceased to be a draft when the Association and Board signed off on it.

We have no reason to reject this evidence.

6. The charging party asserts that the Association's president was careless by not ensuring that anyone entitled to an increment would be identified by a questionnaire such as the one the charging party circulated.

The Association responds that the Hearing Examiner did not find that the Association was obliged to circulate a questionnaire. It further responds that the Hearing Examiner's comment that the questionnaire "illustrates a technique the Association should consider in servicing its membership" was not germane to a determination of the issues; nor were personal opinions expressed by the Hearing Examiner in footnotes 7 and 8.

We agree with the Hearing Examiner that the questionnaires were irrelevant to whether the Association breached its duty of fair representation. The Hearing Examiner's comments in footnotes 6, 7 and 8 were unnecessary to his recommendations and are not adopted by this decision.

7. The charging party asserts that the Hearing Examiner erred in crediting the testimony of the Association's president that he never told the charging party that the grievance on behalf of two other employees was private.

The Association responds that the Hearing Examiner explained why he credited the president.

We have no basis to disturb the Hearing Examiner's credibility determination.

8. The charging party asserts that the Association's president could not be sure that he posted the Fact Sheet since his recordkeeping procedures were remiss.

The Association responds that the Hearing Examiner found that the Fact Sheet was posted and that the charging party had several opportunities to learn about its contents.

We accept the finding that the Fact Sheet was posted.

9. The charging party asserts that the Association's president stated that 200-250 members attended the meeting; but that no sign-in sheet was presented. She also asserts that a letter to all would have ensured that everyone became aware of the increment.

The Association responds that the Hearing Examiner credited the Association's witnesses regarding the number of members who attended the meeting.

We have no basis to disturb the findings about the number of members who attended the meeting. Nor do we have any reason to speculate about how else the Association might have announced contractual changes.

N.J.S.A. 34:13A-5.3 empowers a majority representative to negotiate on behalf of all unit employees and to represent all unit employees in administering the contract. With that power comes the duty to represent all unit employees fairly in negotiations and contract administration. The private sector standards for measuring a union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171 (1967). Under Vaca, a breach of the duty of fair representation occurs only when a union's conduct towards a member of the negotiations unit is arbitrary, discriminatory, or in bad faith. Id. at 191. That standard has been adopted in the public sector. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); see also Lullo v. IAFF, 55 N.J. 409 (1970); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

Under all the circumstances, we agree with the Hearing Examiner that the Association did not breach its duty of fair representation. Accordingly, we dismiss the Complaint.

The Association negotiated the elimination of the contract provision that had limited payments for credits beyond the Masters degree to graduate credits earned after a master's degree. The change was announced to the Association's membership in a Fact Sheet and at two membership meetings. The Association then pursued a grievance on behalf of two employees and all other affected employees seeking retroactive backpay. The arbitrator refused to grant retroactive backpay to anyone other than the two named grievants. The Association unsuccessfully sought to have the arbitrator expand the remedy. Had the charging party sought an increase sooner, she might have become a named grievant and received retroactive compensation.

The Association is not responsible for the charging party's failure to attend a membership meeting or inquire about a contractual change that was referenced, but not fully explained, in the Fact Sheet. The Hearing Examiner properly found that the Association did not breach its duty of fair representation in the way it conducted the ratification process or pursued the grievance to arbitration. The charging party was treated the same as everyone else. It is unfortunate that she missed an opportunity to secure a $1710 raise. But her misfortune was not caused by any breach of duty by the Association.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner McGlynn was not present. None opposed.

DATED: May 30, 2002
Trenton, New Jersey
ISSUED: May 31, 2002

H.E. NO. 2002-10

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EGG HARBOR TOWNSHIP
EDUCATION ASSOCIATION,

Respondent,

-and- Docket No. CI-H-2001-47

DONNA ZELIG,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends dismissal of a duty of fair representation claim finding that the Egg Harbor Township Education Association did not violate 5.4b(1) of the Act by misleading Association member Donna Lynn Zelig regarding the scope of a certain grievance; by failing to give her individualized notice of negotiated changes to its new collective agreement; by not naming her in a specific grievance; or by delaying the publishing and distribution of its new collective agreement for one year.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 2002-10

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EGG HARBOR TOWNSHIP
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Respondent,

-and- Docket No. CI-H-2001-47

DONNA ZELIG,

Charging Party.

Appearances:

For the Respondent, Selikoff & Cohen, P.A., attorneys (Steven R. Cohen, of counsel)

For the Charging Party, Donna L. Zelig, pro se

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On February 1 and March 14, 2001, Donna Lynn Zelig (Charging Party or Zelig) filed an unfair practice charge and amended charge against the Egg Harbor Township Education Association (Association). The charge, as amended, alleges that the Association violated 5.4b(1), (2), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A.34:13A-1.1 et seq. (Act),[1/] by failing to timely advise her of negotiated changes to

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1/ These provisions prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

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the collective negotiations agreement (agreement) governing her terms and conditions of employment with the Egg Harbor Township Board of Education (Board) and by misleading her regarding the scope of a certain grievance regarding changes to the agreement. Specifically, Zelig contends there was a change in the agreement regarding salary guide placement for additional college/educational credits for the 1999-2000 school year which entitled her to a $1,710 adjustment. She contends she was never informed of the change to the agreement, and was thereby precluded from timely requesting an adjustment and from grieving the Board's failure to adjust her salary for the 1999-2000 school year. She contends the Association discriminated against her by processing a grievance regarding the college/educational credits for two other members including the Association's vice president/chief negotiator (the Waszen grievance) but not her.

A Complaint issued on June 26, 2001. The Association filed an Answer on July 5, 2001, denying the allegations and contending: (1) Zelig was provided with adequate notice of changes to the

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1/ Footnote Continued From Previous Page

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 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."

contract; (2) Zelig failed to attend an Association ratification meeting regarding the contract; and (3) the Waszen grievance sought relief for "any other adversely affected employee..." not just the two named grievants. The Association also requested the 5.4b(2), (3) and (5) claims be dismissed contending Zelig lacked standing, as an individual, to maintain the b(2) and (3) claims and that she failed to assert any facts constituting a violation of Commission rules or regulations.

A hearing was conducted on August 16 and October 3, 2001.[2/] A prehearing conference was conducted prior to the hearing on August 16, 2001 during which Zelig withdrew her 5.4b(2), (3) and (5) claims (1T10).

During the hearing, the parties presented witnesses, submitted exhibits[3/] and entered stipulations. The parties waived oral argument and submitted briefs by November 19, 2001. Based on the entire record, I make the following:

FINDINGS OF FACT

1. Zelig is a public employee and the Association is an employee organization within the meaning of the Act (1T9). The Association represents approximately 400 employees working in six buildings (2T11).

2/ Transcript references are 1T and 2T, respectively.

3/ Exhibit designations are as follows: C - Commission; J - Joint; CP - Charging Party; and R - Respondent.

2. Zelig has been employed as a teacher by the Board and has been an Association member for 24 years (1T28). She holds a bachelor of arts degree, masters certificate, and principal, supervisory elementary, secondary, nursery and French certificates (1T28). Prior to 1999, she was not active in Association business, however, over the years she has attended union meetings, including ratification meetings, and she has voted in elections to approve or reject negotiated proposed agreements. The Board and Association have negotiated approximately eight collective negotiations agreements during her term of employment (1T117, 1T152).

Summer 1999 Negotiations

3. The Association and Board were parties to a collective negotiations agreement covering the term 1996-1999 (the 1996-1999 contract) (J-2; 2T9-2T11). The parties negotiated a successor agreement during the spring and summer of 1999 (the 1999-2002 contract) (J-3; 2T11).

Article 10, paragraph C(3) of the 1996-1999 contract provided that "[p]ayments for credits beyond the MA degree shall be credited only for graduate credits earned after the Master's Degree." (J-2; 2T11). In late June or early July 1999, Board and Association negotiators reached a tentative agreement on the terms for a successor contract which eliminated Article 10, paragraph C(3) (2T11-2T13). Association President Bill Jackson explained the Association's reasons for deleting the provision.

> Our proposal was that that language be eliminated because at the time for example if you were

> studying for a Master's Degree in Special Education and had earned fifteen credits and then decided that you would like to have your Masters Degree in Guidance and you got your Master's Degree in Guidance, those fifteen credits would not--the 15 credits that you had already taken for your Masters in Special Education, would not count for lateral movement on the guide so when you got done getting your Master's Degree in Guidance, you would only have--you would be paid on the masters level rather than the masters plus fifteen level. We felt that was unfair and we had that language in the successor agreement, that language was deleted (2T11-2T12).

August 1999 Meeting

4. Following the tentative agreement, the Association scheduled a mid-August meeting, open to all members, at the middle school to discuss the proposed changes to the contract (2T13, 2T21, 2T100). Zelig was away on vacation during August 1999, contends she did not receive the meeting notice and did not attend the meeting (1T115-1T116, 2T121). Jackson did not keep any copies of the scheduling letter but he personally folded the notices, stuffed, labeled and mailed approximately 400 envelopes containing the meeting notices (1T115-1T116, 2T13, 2T45, T100-2T101, 2T121). Association Vice President/Chief Negotiator Kathleen Waszen received the meeting notice by mail. Moreover, although no attendance records were kept, 200 to 250 Association members attended the meeting (2T13, 2T65, 2T101).

President Jackson sometimes prepares meeting agendas. The only topic for this meeting, however, was a discussion of the tentative agreement, therefore no agenda was prepared (2T42, 2T65). During the meeting, Jackson and Waszen described proposed changes to

the contract and distributed a "fact sheet" listing the changes (2T13-2T15; R-1). The distribution of fact sheets, or highlight sheets at Association meetings is a standard operating procedure (2T16).

The fact sheet states that "article 10 paragraph C(3) is deleted from the contract" (R-1; 2T17). Jackson advised the membership as follows:

> Basically what was said is we discussed the language that was in the old contract about not being paid for credits that you may have and that whole paragraph was deleted and therefore if you had credits you weren't being paid for, you should submit a request for lateral movement on the guide because now you would be able to indeed have that lateral movement, if we approved the contract, it would become part of the new working agreement and it would be--you would be able to have that lateral movement on the guide (2T17).

Waszen also addressed the membership:

> The first thing I did was I read from our old contract what article ten, paragraph C-3 said. Then I preceded [sic] to say that that paragraph is now deleted from the contract through the negotiated agreement and I discussed what that meant to the members.
>
> Q. What did you say?
>
> A. I told them that that now means that if you have credit that you were not given credit for across the guide, that you could submit your letter now to receive the credit so that you could be moved across the guide (2T102-2T103).

During the meeting, members were able to ask questions about changes to the contract and the meeting did not conclude until all questions were asked and answered (2T17-2T18). Additionally, the members were advised there would be a second, similar, meeting

following the mandatory superintendent's meeting in September and thereafter the tentative agreement would be put to a ratification vote (2T18).

September 1999 Association Meeting and Ratification Vote

5. On the first day of the 1999-2000 school year the mandatory district-wide superintendent's meeting was held at the middle school. All Association members were required to attend (2T18-2T19, 2T46, 2T104). There is no record that Zelig was absent from school that day; her attendance sheet reflects she was only out one day that month, September 14, 1999 (CP-1). It is not clear from the record, however, whether Zelig actually attended the meeting.

The Association conducted its ratification meeting following the superintendent's meeting (2T19, 2T20). Before the meeting started, President Jackson had a brief discussion with Assistant Superintendent Philip Heery to confirm the contents of the tentative agreement. He provided Heery with a copy of the fact sheet (2T19).

The September ratification meeting was conducted in the same manner as the August meeting; all members were given the opportunity to ask questions regarding proposed contract changes, Jackson and Waszen answered the questions and explained the fact sheet (2T21, 2T103; R-1).

The Association ratified the contract the next day and the Board also subsequently ratified the contract (2T21; CP-7).

Waszen Grievance

6. Following ratification, Waszen and Kathy Crecco-Meyer, a rank-and-file Association member, submitted letters to the superintendent requesting salary guide adjustments for additional college/educational credits for the 1999-2000 school year (2T106, 2T107). Both requests were denied and the Association filed a grievance seeking relief on behalf of Waszen and Crecco-Meyer as named grievants, as well as on behalf of "any other adversely affected employee denied proper placement on the salary column...retroactive to September, 1999" (J-1).

The grievance proceeded to binding arbitration. The Association was represented by NJEA UniServ Representative Myron Plotkin. Plotkin made both an oral and written presentation (J-1) seeking relief on behalf of the named grievants and "any other adversely affected employee." In June 2000, the arbitrator sustained the Association's grievance but limited relief to Waszen and Crecco-Meyer (2T85, 2T88).

Waszen and Crecco-Meyer were apparently the only two Association members who filed grievances about salary adjustments in 1999. Jackson had "no knowledge of how many people were adjusted on the guide once the contract went into effect" (2T67). Jackson explained that it was not his responsibility to identify which teachers were entitled to salary adjustments:

> Each individual teacher is responsible for providing a transcript for lateral movement on the guide. I am not entitled to information or I don't have access to information as to your [Zelig's] particular level of training other than once a year I get a list of the teachers and where they are on the guide" (2T55-2T56).

Likewise, Waszen explained that her job

> ...as the chief negotiator of this contract was to make sure that [] members understood it. So when we had meetings I mean many times I went over and said I want to take it step by step and we took it step by step and when it got to the part where it says article ten, paragraph C-3, I went over that in detail because that was a very dear to my heart issue (2T109).

Zelig-Jackson Conversation and the Delayed Contract Booklet

7. Zelig contends that in September, 1999 she asked President Jackson when she would receive a new contract booklet. She claims Jackson told her that there were "some grievances going on, "which were "private." Zelig wanted to know about the grievances "in case it would involve me [her]" (1T29). Jackson denied making the statements (2T23, 2T61). I credit Jackson.

Zelig and Jackson were the only parties to the alleged conversation and there is no collateral evidence supporting Zelig's version. No facts were presented regarding the date (other than being sometime in September, 1999), time, location or circumstances of the alleged conversation.[4/]

Zelig offered no reason why Jackson would prevent her from learning about the Waszen grievance. There was no testimony that Zelig and Jackson or any member of the Association leadership had a

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4/ Zelig's husband provided, without objection, double hearsay testimony regarding Zelig's telling him over dinner about the alleged Jackson conversation (1T167-1T168). This too, is not supported by any independent, competent evidence. The balance of Mr. Zelig's testimony was generalized character evidence about Mrs. Zelig.

strained personal or professional relationship to justify withholding information about the Waszen grievance.

Conversely, Jackson explained the reason he denied making the statements Zelig attributes to him is because grievances are not private. Typically, a report is given by the Association's grievance chairperson regarding the status of all pending grievances at monthly "rep" council meetings held throughout the school year. Moreover, Grievance Chairperson Alice Booth specifically reported on the status of the Waszen grievance at "rep" council meetings during the time period the grievance was pending (2T23-2T24, 2T40, 2T116-2T117).

Zelig attempted to impeach Jackson's credibility. She tried to show inconsistencies in his testimony regarding the posting of the fact sheet in September, 1999. In February 2001, Jackson tossed two documents on a teacher's room table instead of posting them on a bulletin board. One document was a memorandum on current issues (CP-12), the other dealt with an overnight workshop (CP-13). The parties acknowledged that the current issues memorandum was probably posted on a bulletin board but both were also left on the teacher's room table (2T49-2T52, 2T81).

Regardless of what other documents were posted or circulated in February 2001, Jackson posted the fact sheet on a bulletin board in September 1999 (2T81). Moreover, Waszen saw the fact sheet posted in her building as well (2T111). Zelig demonstrated that Jackson treated documents in February 2001

differently from the fact sheet in September 1999. That, however, is not evidence that he failed to post the fact sheet in 1999. I found Jackson a credible witness.5/

Based on the foregoing, I find that the fact sheet was posted in September 1999. Moreover, I find that Jackson did not tell Zelig the Waszen grievance was "private."

8. In September 1999, following ratification of the 1999-2002 contract, the Association delayed publishing copies of the new contract booklet to its members. Jackson explained that immediately after ratification, two grievances, one regarding graduate credits (the Waszen grievance), and another regarding longevity payments, were filed. A petition for a scope of negotiations determination was also pending before the Commission. P.E.R.C. No. 2000-50, 26 NJPER 63 (¶31023 1999)(various provisions from the expired contract found to be mandatorily negotiable). The Commission issued its decision on December 17, 1999 (2T26-2T27; CP-5). President Jackson was concerned those matters might impact entire sections of the successor contract and, in agreement with other Association leaders, decided not to print and publish the new contract (2T26, 2T79).

The Association eventually sent a memorandum explaining the delay in publishing the contract booklets, together with a copy of the fact sheet and revised salary guides, to all members on March

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5/ I also note that no evidence was presented that anyone did not see a fact sheet posted in September 1999.

16, 2000 (CP-5; R-1). It advised the membership that contract booklets would be published after the arbitrator's decision issued on the grievances (2T28-2T29). The booklets were distributed in September 2000 (1T101, 2T26).

Zelig's Salary Guide Adjustment

9. Zelig did not make a request for salary guide adjustment based upon college/educational credits during the 1999-2000 school year. She contends it was because she was not aware of the change in the contract. She did, however, request an adjustment for the 2000-2001 school year. It was granted by the Board on November 28, 2000 (C-3, CP-9).

Upon receiving the salary guide adjustment for the 2000-2001 school year, Zelig requested "that retroactive pay be instituted from September, 1999" (CP-4, p.1). Zelig's request for retroactive pay was denied by Assistant Superintendent Heery, who wrote that "the terms and conditions of the newly ratified negotiated agreement were made known to the general membership of the [Association] in September 1999 through informational meetings conducted by the Association. At no time during the 1999-2000 school year did you [Zelig] make any claim for an adjustment for your training level." (CP-4, p.2).

After Zelig received Heery's letter rejecting her request, she sought advice from Association President Jackson to determine if there was a basis for her to pursue a grievance. Jackson responded by memorandum dated December 7, 2000 (CP-7) attaching three

subparts, "A", "B" and "C". Subpart "A" is the Memorandum of Understanding between the Board and the Association; subpart "B" is the fact sheet (R-1), and subpart "C" is the page of the 1996-1999 agreement (J-2) containing the deleted language of Article 10, paragraph C(3) (2T29, 2T31). Zelig responded on the same date with additional questions (CP-6; T32). The next day, December 8, Jackson sent Zelig a memorandum answering her questions and recommending that she discuss the potential grievance with NJEA UniServ Representative Plotkin (CP-19; 2T32-2T33).

Plotkin spoke with Zelig in December, 2000 and received a letter from her dated December 30, regarding the potential filing of a grievance (CP-11; 2T88-2T89). Plotkin advised Zelig that pursuing a grievance would "most likely be unsuccessful" since the arbitration award "limited the relief to the two individuals named in the award, the arbitrator did not choose to give retroactive [relief] to anyone else" 2T89, 2T90, 2T91).

Plotkin asked the arbitrator if the remedy ordered in the Waszen grievance could be expanded to include Zelig. The arbitrator declined to clarify her award to include "other adversely affected employees." Plotkin relayed this to Zelig and Jackson (2T90-2T91). Plotkin advised that "after an arbitration award is put out, the likelihood of success of putting in for somebody else retroactive was extremely unlikely" (2T91).

In March 2001, Zelig circulated a questionnaire to Association members regarding salary guide placement for additional

college/educational credits (2T67; CP-14). Jackson was not surprised that four teachers responded to Zelig's questionnaire (2T67).6/

ANALYSIS

Standards of Review

Section 5.3 of the Act empowers an employee representative to represent employees in the negotiations and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly in negotiations and contract administration. A majority representative violates 5.4b(1) of the Act if its actions tend to interfere with, restrain or coerce employees in the exercise of rights guaranteed them by the statute, provided the actions lack a legitimate and substantial organizational justification. FOP Newark Lodge #12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶16212 1985); FMBA Local No. 35 (Carragino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983). Read together, 5.3 and 5.4b(1) of the Act set forth the majority representative's duty of fair representation.

6/ Although I admitted a copy of the questionnaire into evidence, I denied admission of completed responses to questionnaires (1T108-1T114; 2T5). The probative value of this evidence, almost two years removed from the underlying events, is dubious at best. The responses themselves are uncorroborated hearsay and the questionnaire was prepared in anticipation of litigation. While I credit Zelig's creativity and initiative in preparing the questionnaire and note it illustrates a technique the Association should consider in servicing its membership, it is too remote in time to be relevant to the underlying issues in this case.

A majority representative violates its duty of fair representation when its conduct towards a unit member(s) is arbitrary, capricious or in bad faith. Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). The New Jersey courts and the Commission have adopted the Vaca standard. Saganario v. Attorney General, 87 N.J. 480 (1981); see also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984).

A majority representative must 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 Cty. and NJCSA (Mackaronis), P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980) aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. 91 N.J. 242 (1982); New Jersey Tpke Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); and AFSCME Council No. 1 (Banks), P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

Charging Party's Claims

Cognizant of the foregoing standards, I find that Jackson did not tell Zelig the Waszen grievance was private (See Finding of

Fact No. 7). Therefore, the Association did not violate 5.4b(1) of the Act because I do not find it mislead Zelig regarding the scope of the grievance.

Zelig also claims that the Association breached its duty of fair representation by failing to advise her of negotiated changes in the 1999-2002 contract. She contends the two ratification meetings, the fact sheet and the one-year delay in publishing the new contract booklet are evidence of the Association's failure to meet that duty. She further contends her own failure to file a grievance based on the negotiated changes was the result of the Association's failure to properly communicate to her the new terms and conditions of employment.7/

The critical issue this case presents is whether the Association's two meetings and posting of the fact sheet were sufficient to advise Association members of proposed changes to the terms and conditions of their respective employment. That raises a sub-issue regarding the sufficiency of the contract ratification procedure utilized by the Association.

7/ While I do not agree with the Association's rationale for the delay in publishing the contract, the delay itself is not necessarily a violation of the Act. See generally New Jersey Sports & Expos. Auth., D.U.P. No. 98-23, 24 NJPER 42 (¶29025 1997) (charge alleging violation due to failure to provide contract to membership for almost one year dismissed because contract was being reviewed for errors) app. den. P.E.R.C. No. 98-117, 24 NJPER 208 (¶29097 1998) (appeal untimely).

Contract ratification procedures are generally beyond the scope of the Commission's regulatory authority. Camden Cty. Coll. Faculty Ass'n., D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987) (ratification procedures constitute internal union matters where no evidence that employee suffered any harm or discrimination); see also Council of N.J. State Coll. Locas, D.U.P. No. 81-8, 6 NJPER 631 (¶11271 1980). Allegations regarding irregularities in the ratification procedure, including the withholding of copies of contracts, are internal union matters and are properly resolved in the Superior Court. CWA (Williams), P.E.R.C. No. 95-75, 21 NJPER 160 (¶26095 1995). Likewise, the sufficiency of the notice scheduling the August meeting and the sufficiency of the fact sheet also implicate internal union matters and are beyond the scope of the Commission's jurisdiction. SEIU, Local 455/74 (Freeman et al.), P.E.R.C. No. 96-19, 21 NJPER 351, 352 (¶26217 1995). Moreover, there does not appear to be any case law precedent requiring a majority representative to communicate negotiated changes to its members on an individualized basis. See generally, CWA, Local 1044 (Treu), D.U.P. No. 96-12, 22 NJPER 48 (¶27024 1995) (no individual statutory right to be apprised of union negotiations strategy, scheduling, or to receive pre-negotiations mailings).

Even if the Commission had jurisdiction to consider irregularities in the ratification procedure, I find Zelig has not proven, by a preponderance of the evidence, that the Association breached its duty of fair representation. See N.J.A.C. 19:14-6.8.

The Association has demonstrated it conducted two membership meetings, posted a fact sheet intended to advise its members of negotiated changes, and processed a grievance on behalf of all members. No evidence shows that Zelig was treated differently than other Association members.

Zelig did not attend the August meeting but 200 to 250 Association members did, and they discussed the successor contract. Although the Association did not produce even one of those members in attendance (besides Association leaders Jackson and Waszen), Zelig did not demonstrate that the meeting was deficient in any way. Nor does the record show that Zelig was prevented from or told not to attend the September meeting. She had the same opportunity as all other Association members to attend as it followed a mandatory district-wide superintendent's meeting. Zelig did not establish that the September meeting was deficient in any way.

The Association posted a fact sheet which identified changes to the prior contract. The fact sheet, read together with the 1996-1999 contract, provided Association members notice of changes to the terms and conditions of their employment. Association members voted in September 1999 to ratify the proposed 1999-2002 contract. The ratification vote also provided Zelig, a 24-year experienced teacher, Association member, and veteran of eight collectively negotiated agreements, constructive if not actual notice of changes to the terms and conditions of employment.

Zelig was not singled-out from the meetings, the grievance or excluded from the ratification vote, nor was she precluded from obtaining information about the new contract. She has not demonstrated that the Association's conduct regarding the circulation of information about the successor contract was arbitrary, discriminatory or in bad faith. The Association treated Zelig in the same manner, and she had the same opportunities, as all other Association members with regard to information about negotiated changes in the 1999-2002 contract. Thus, I find the Association did not breach its duty of fair representation and the Complaint should, therefore, be dismissed.

CONCLUSION OF LAW

The Association did not violate 5.4b(1) of the Act by misleading Association member Zelig regarding the Waszen grievance; by failing to give her individualized notice of negotiated changes to its new collective agreement; by not naming her in a specific grievance; or by delaying the publishing and distribution of its new collective agreement.

RECOMMENDATION

I recommend the Complaint be dismissed.8/

Kevin M. St.Onge
Hearing Examiner

Dated: February 11, 2002
Trenton, New Jersey

8/ Although I recommend dismissal of the Complaint, I am troubled that given the circumstances of this case, the Association chose to litigate against its 24-year member rather than present her $1,710 claim to the Board.