

D.U.P. NO. 2000-9

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

In the Matter of

EDISON TOWNSHIP EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-99-78

LUCILLE M. TAGIE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge brought by Lucille M. Tagie, an individual. Tagie alleged that the Edison Township Education Association violated its duty of fair representation when the Association President made allegedly false and derogatory statements about Tagie's workload and responsibilities during the processing of another unit member's grievance. The Director determined that where no adverse consequences resulted to Tagie from the processing of the grievance, there is no contractual rights for the union to enforce on behalf of Tagie. He further found that failure to notify Tagie of the grievance does not implicate a violation of the duty of fair representation.

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

In the Matter of

EDISON TOWNSHIP EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-99-78

LUCILLE M. TAGIE,

Charging Party.

Appearances:

For the Respondent,
Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, of counsel)

For the Charging Party
Lucille M. Tagie, pro se

REFUSAL TO ISSUE COMPLAINT

On June 8, 1999, Lucille M. Tagie filed an unfair practice charge against the Edison Township Education Association (Association). Tagie 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) and (5)^{1/} when Association President Dennis Deverin allegedly made false, derogatory statements about Tagie's workload and duties as head guidance counselor during the processing of another guidance counselor's grievance.

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

The Association contends that the charge should be dismissed. It asserts that Tagie did not file a grievance and, therefore, since the Association was not then representing her, it could not have breached any duty of fair representation. Moreover, remarks made during the processing of another unit member's grievance, even if inaccurate, do not constitute a violation of the Act.

The Commission has authority to issue a Complaint where it appears that the 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. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. In correspondence dated October 8, 1999, I advised the parties that I was not inclined to issue a Complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the Complaint issuance standard has not been met.

The Association represents professional non-supervisory employees employed by the Edison Township Board of Education (Board). The Association and the Board were parties to a collective negotiations agreement effective from July 1, 1996 through June 30, 1999.

Tagie is employed as a head guidance counselor at the John Adams Middle School. Paul Battaglia is employed as a guidance counselor at the same school. Both Battaglia and Tagie are members of the Association's collective negotiations unit.

On October 7, 1997, the Association filed a grievance on behalf of Battaglia protesting his workload, specifically that Battaglia was assigned responsibility for 16 sections while Tagie had responsibility for only 14 sections. The grievance stated in pertinent part that:

Since the head counselor receives a stipend for that position, it is assumed that the stipend is to pay for added responsibility and tasks that come with the role of head counselor. To receive a reduced load of class sections would seem to be a form of additional compensation over and above the stipend -- a form of "double-dipping", perhaps.

The grievance requested an equalized workload distribution between Battaglia and Tagie.

Battaglia's grievance was heard in closed session before the Board. Battaglia was represented by Association President Deverin. Tagie did not know about the grievance hearing and did not attend. At the hearing, Superintendent Capraro rebutted statements made by the Association representative relative to Tagie's stipend. Capraro explained that Tagie's position entailed additional responsibilities besides the section assignments. The grievance was denied. No personnel action was taken against Tagie as a result of the allegations raised by Battaglia's grievance.

Subsequently, Battaglia filed a lawsuit against the Board and the middle school principal alleging discrimination based on a comparison of his job duties with those of Tagie's. In January 1999, the Board's attorneys met with Tagie to prepare for depositions concerning the suit. It was during this meeting that Tagie learned about Battaglia's 1997 grievance and the statements made by the Association during the processing of that grievance.

In February 1999, Tagie met with Deverin to express her concerns relating to the damage to her professional reputation and the Association's lack of research in preparation for the 1997 grievance. Tagie asserted that additional research would have revealed the additional responsibilities she performed as head guidance counselor and justified the stipend for the position. Deverin reiterated that he had done his best to research the facts before filing the grievance. Deverin provided Tagie with a copy of the grievance.

Tagie next consulted with an NJEA attorney concerning her possible testimony in the Battaglia lawsuit as well as the Association's assertions about her in the processing of the Battaglia grievance. As to the latter concerns, the NJEA attorney recommended that Tagie seek alternate legal counsel because of a possible conflict of interest on the attorney's part. However, the attorney did recommend that the NJEA provide Tagie with an attorney to represent her interests at depositions concerning Battaglia's lawsuit. However, Tagie was never deposed. Battaglia withdrew the

lawsuit in April 1999. No personnel action was taken against Tagie as a result of the grievance or lawsuit. Tagie has filed no grievance herself.

ANALYSIS

Tagie alleges that when the Association made derogatory and inaccurate statements about Tagie in processing the grievance of another unit member, it violated the duty of fair representation it owed her. However, I find that the charge fails to allege a violation of the Act.

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. The standards in the private sector 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 statutory 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. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

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. OPEIU Local 153, 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 Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) ("Local 194"); and 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.

Where, as here, the employee's grievance does not result in any adverse consequences to the supervisor or other non-grievant unit member, there is no duty for the union to represent that employee. See CWA (McDevitt), D.U.P. No. 94-24, 20 NJPER 114 (¶25058 1997) (no violation when the union did not provide a representative for a member supervisor in a grievance hearing for the subordinate). See also CWA (Wilson), D.U.P. No. 97-38, 23 NJPER 414 (¶28190 1997). However, if the non-grievant member is later disciplined or otherwise adversely affected because of facts arising out of the grievance process, the union then owes a duty to

represent that member in any grievance or appeal of the discipline. UMDNJ, D.R. No. 98-2, 23 NJPER 440 (128202 1997).

Here, Battaglia's grievance resulted in neither discipline nor any other personnel action which affected Tagie's terms and conditions of employment. In the context of Battaglia's grievance, Tagie had no contract rights for the union to enforce.

Moreover, Tagie has filed no grievances for which she requested representation. In the one instance where she did seek representation, the NJEA attorney recommended that Tagie be provided with another attorney for the deposition in the Battaglia civil suit. However, Tagie was never deposed and, therefore, never required the assistance of counsel.

Further, the fact that Tagie was not notified of Battaglia's grievance does not implicate a violation of the duty of fair representation. In Saginario v. Attorney General, 87 N.J. 480 (1981), the New Jersey Supreme Court stated that the issue was whether a "public employee, whose interest conflicts with the position taken by the employees' majority representative in invoking and processing a matter through the grievance procedure and arbitration, must be given notice and opportunity to be heard." [Id. at 482]. Saginario is distinguishable from the instant matter. In Saginario, the State Troopers Fraternal Association instituted a grievance challenging the promotion of one of its members, Carmen Saginario. The outcome of the union's grievance relating to the promotion directly impacted a term and condition of employment of

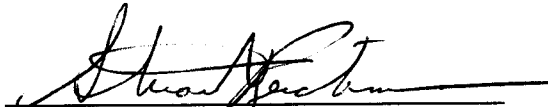
another employee. The Court found that the non-grievant had a right to notice and to be heard since the employee had an important interest at stake and the union position was in direct conflict with the employee's interest. Here, Tagie has alleged no term and condition of her employment which was implicated as a result of Battaglia's grievance. The alleged misstatements concerning her duties and responsibilities had no discernible affect on her position nor was any adverse action taken against her. Battaglia's grievance did not require the Board to effect Tagie's terms and conditions of employment. His grievance could have been remedied by changing only Battaglia's conditions of employment.

Based upon all of the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{2/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: November 4, 1999
Trenton, New Jersey