

D.U.P. No. 2011-1

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

In the Matter of

HEALTH PROFESSIONALS AND  
ALLIED EMPLOYEES LOCAL 5094,

Respondent,

-and-

Docket No. CI-2010-018

LBB,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge filed by an individual charging party against HPAE Local 5094. The charge alleges that Local 5094 breached its duty of fair representation when it failed to file a grievance contesting LBB's June 5, 2009 termination from employment with the University of Medicine and Dentistry of New Jersey. The Director found that LBB had not alleged any facts which suggest that Local 5094's decision not to file a grievance contesting his termination was arbitrary, discriminatory, or in bad faith.

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Appearances:

For the Respondent,  
Michael Kunizaki, Representative

For the Charging Party,  
Law Office of James P. Madden, attorney  
(James P. Madden, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On December 7 and 30, 2009, LBB<sup>1/</sup> filed an unfair practice charge and amended charge against his majority representative, Health Professionals and Allied Employees Local 5094 (Local 5094). The charge, as amended, alleges that Local 5094 violated 5.4b(1)<sup>2/</sup> of the Act when it failed to file a grievance

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1/ "LBB" signifies the initials of a named individual collective negotiations unit employee.

2/ This provision prohibits employee organizations, their representatives or agents from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

contesting LBB's June 5, 2009 termination from employment with the University of Medicine and Dentistry of New Jersey (UMDNJ).

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute unfair practices on the part of the respondent and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. 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. On April 20, 2010, I wrote a letter to the parties, advising that I was not inclined to issue a complaint in this matter and setting forth the reasons for that conclusion. The parties were provided an opportunity to respond.

LBB filed a letter brief and printed copies of emails exchanged by him and Local 5094 representatives shortly after his termination. LBB's emails reveal his dissatisfaction with the quality of representation he received from Local 5094. Local 5094's emails express regret that LBB ignored its advice to follow a UMDNJ directive and that he did not consult Local 5094 before responding to UMDNJ's certified letter instructing him to return to work.

The material facts remain undisputed. I find the following:

LBB was employed by UMDNJ in the title of user support specialist III in its Information Systems and Technology Department. His title is included in a negotiations unit represented by Local 5094.

On May 15, 2009, LBB contacted Local 5094 representative Ryan Novosielski to discuss a directive he received from his supervisor to provide a written statement regarding "excessive mileage" on a UMDNJ vehicle assigned to him. UMDNJ warned that failure to provide the written statement could lead to discipline. Novosielski advised LBB to prepare a written statement as instructed. LBB did not file any document. On May 19, 2009, he was placed on an unpaid administrative leave. The next day or soon after, UMDNJ issued LBB a certified letter instructing him to report to work on May 26, 2009.

LBB did not report to work on May 26, 2009. On or about June 1, 2009, LBB informed UMDNJ that he would not return to work until June 8, 2009. He had not requested time-off in advance of his stated absence. UMDNJ terminated him.

On or about June 9, 2009, LBB contacted Local 5094 staff representative Michael Kunizaki to discuss filing a grievance contesting his termination. LBB informed Kunizaki that he didn't know that he was expected to report to work on May 26, 2009

because he didn't open the certified letter from UMDNJ until one week after it was delivered.

Kunizaki investigated the matter to determine whether a meritorious grievance could be filed on behalf of LBB. Specifically, he spoke with one of LBB's coworkers and with Novosielski. He reviewed emails that were exchanged between the parties. Kunizaki also consulted a Local 5094 senior staff representative, Terry Alaimo. It was determined that under the circumstances a meritorious grievance could not be filed.

The grievance procedure in the collective negotiations agreement between Local 5094 and UMDNJ, effective July 1, 2006 through June 30, 2010, permits an employee to file a grievance individually without union participation.

#### **ANALYSIS**

Section 5.3 of the Act empowers an employee representative to represent employees in the negotiation and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly. A violation of that duty 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, 64 LRRM 2369 (1967). The Commission and the New Jersey courts have adopted this standard. Saginario v. Attorney General, 87 N.J. 480 (1981); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409

(1970); Fair Lawn Bd. of Ed. (Solomons), P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

A majority representative does not have an obligation to present every grievance which a unit member asks it to submit. It would be contrary to the most basic labor-management principles as well as common sense to require a union to do so. Camden Cty. Coll., P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Trenton Bd. of Ed., P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986). A refusal to file a grievance will be judged by the standard used to determine whether a union breached its duty of fair representation: did it act arbitrarily, discriminatorily or in bad faith? See Fair Lawn Bd. of Ed.; OPEIU Local 153.

LBB has not alleged any facts which suggest that Local 5094's decision not to file a grievance contesting his termination was arbitrary, discriminatory or in bad faith. Nor does it appear that Local 5094 was obligated to advise LBB of his right to file and process a contractual grievance at steps one and two. See Camden Cty. Coll., 13 NJPER 755, 757 n.5 (1987). LBB could have filed his own grievance at step one and moved it to step two. Accordingly, I find that the Commission's complaint issuance standard has not been met.

**ORDER**

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

/s/ Arnold H. Zudick  
Arnold H. Zudick, Director

DATED: July 23, 2010  
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to  
N.J.A.C. 19:14-2.3.

Any appeal is due by August 3, 2010.