

D.U.P. NO. 93-17

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

In the Matter of

OLD BRIDGE MUNICIPAL EMPLOYEES'
ASSOCIATION & TOWNSHIP OF OLD BRIDGE,

Respondents,

-and-

Docket Nos. CI-92-80
CI-92-81

JOSEPHINE J. MCMAHON,

Charging Party.

OLD BRIDGE MUNICIPAL EMPLOYEES'
ASSOCIATION & TOWNSHIP OF OLD BRIDGE,

Respondents,

-and-

Docket Nos. CI-92-82
CI-92-83

MARILYN BALZER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses charges filed by two former Old Bridge Township employees, finding that their allegations do not constitute a violation of the Act. The Commission has no jurisdiction over the charges filed by the former employees alleging that the Township singled them out for layoff based upon political discrimination. The former employees' charge alleging that their majority representative "failed to help them" was insufficient to warrant complaint issuance. The individuals did not state that they specifically requested union representation, nor did they state what part of the contract they believed might have been grieved. Moreover, the contract permitted employees to initiate and process their own grievances through step two of the grievance procedure.

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Charging Party.

Appearances:

For the Respondent Association
Ed Lauer, former President

For the Respondent Township
William Ruggiero, Township attorney

For the Charging Party McMahon
Josephine McMahon, pro se

For the Charging Party Balzer
Thomas J. Savage, attorney

REFUSAL TO ISSUE COMPLAINT

On April 10, 1992, Josephine McMahon and Marilyn Balzer,
former employees of Old Bridge Township, filed unfair practice

charges with the Public Employment Relations Commission. Charging Parties allege that the Township of Old Bridge violated subsections 5.4(a)(1), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it terminated their employment with the Township. Balzer and McMahon both allege that their layoffs were based upon political discrimination because they were administrative aides to the previous Township mayor and business administrator, respectively.

Balzer and McMahon also allege that the Old Bridge Municipal Employees Association violated subsections 5.4(b)(1), (3), and (5)^{2/} of the Act. Balzer charges that the MEA "failed to help" and that the MEA shop steward did not offer to file a

1/ These subsections prohibit public employers, 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) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

2/ 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 (5) Violating any of the rules and regulations established by the commission."

grievance for her. McMahon charges that the Association "failed to help [her] with bumping rights and preparing a grievance." She also states that the Association failed to negotiate on her behalf. The charges allege that the shop steward indicated to McMahon and Balzer that there was some doubt that they were members of the MEA unit as both had previously worked in non-unit, confidential titles, and had only recently been placed in titles covered by the MEA contract. Both employees had just completed their six-month probationary period in bargaining unit titles prior to being laid off.

A breach of the duty of fair representation occurs only when a union's conduct toward a unit member is "arbitrary, discriminatory, or in bad faith." Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967). An employee representative has a wide range of reasonableness in deciding which grievances have merit and deserve pursuit. The representative is not obligated to take every grievance, regardless of its worth, through the grievance process. The Commission and New Jersey Courts have consistently applied the Vaca standard in evaluating fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981). A union must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 191983); Middlesex County Bd. of Freeholders, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Dkt. No. A-1455-80 (4/1/82), pet. for cert. den. (6/16/82).

Charging parties do not state facts on which we might conclude that the Association breached its duty to fairly represent them. While McMahon and Balzer assert that the MEA did not help them, neither asserts that she specifically sought to file a grievance under the terms of the contract. Nor do charging parties assert what viable grievance the MEA might have pursued under the contract. The contract between the Township and the Association covering unit employees provides at Article IX that any layoff of MEA unit employees must be accomplished by seniority, commencing from the time of their reentry into a bargaining unit position, not based upon their length of employment with the Township. See contract article VII(C).

Moreover, the contractual grievance process in Article III permits employees to present and process their own grievance through at least the second step of the grievance procedure.

Additionally, we note that as a result of a representation petition filed by Teamsters Local 469 on March 20, 1992, the Old Bridge Municipal Employees Association was decertified on June 1, 1992 after a secret ballot election conducted by the Commission among the unit employees. The Association no longer represents anyone and its negotiator has advised us that the Association has dissolved.

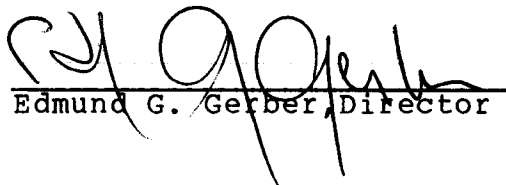
As no specific facts have been alleged concerning the Association's contention that violated the duty of fair representation when it failed to prepare grievances for Balzer and

McMahon. I decline to issue a complaint on the charge filed against the Association.

As to the charges against the Township, the charging parties allege only that they were discriminated against for political reasons. This Commission has no jurisdiction to hear such allegations. There are no factual assertions in either charge indicating that the layoff was motivated by charging parties' activities protected under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; nor are any facts alleged suggesting that the Township violated subsections 5.4(a)(1), (3), (5) or (7). Accordingly, I decline to issue a complaint concerning the charges against the Township.

Therefore, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations in these charges. N.J.A.C. 19:14-2.3. Accordingly, the charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 11, 1992
Trenton, New Jersey