

D.U.P. NO. 2005-6

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

In the Matter of

NEWARK LIBRARY AND
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 68,

Respondents,

-and-

Docket No. CI-2005-010

HERBERT H. SHAW,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by an employee of the Newark Library, finding that none of the employer's alleged wrongdoings are within the jurisdiction of the New Jersey Employer-Employee Relations Act. In addition, the Director found that the charging party failed to allege any specific conduct on the part of Local 68.

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Charging Party.

Appearances:

For the Respondent - Library,
Dr. Alex Boyd, Director

For the Respondent - Local 68,
Alfred Fantuzzi, Business Representative

For the Charging Party,
Herbert H. Shaw, pro se

REFUSAL TO ISSUE COMPLAINT

On August 17, 2004, Herbert H. Shaw filed an unfair practice charge, along with several attachments, against his employer Newark Library, and against his employee representative the International Union of Operating Engineers, Local 68, alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} Specifically, Shaw alleges that the

^{1/} While the charge listed former New Jersey Department of Personnel Commissioner Ida Castro as one of the respondent's agents to contact, the New Jersey Department of Personnel

(continued...)

Library violated 5.4a(1), (3), (4) and (7)^{2/} and that Local 68 violated 5.4b(1), (3) and (5)^{3/} of the Act by conspiring to foster patronage through the staffing of the Library with incompetent personnel. Shaw claims that the Respondents' actions, in not allowing the best personnel, including war veterans, to take job examinations and thus qualify for Library positions, cheat the State's taxpayers.

Shaw further alleges that the Library is an "asbestos-laden fire trap". He claims that the Library has spent millions of dollars on poorly designed renovations with serious fire and

1/ (...continued)
was not named as a respondent.

2/ These provisions 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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (7) Violating any of the rules and regulations established by the commission."

3/ 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. (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."

building code violations and notes that the Library denies the violations and has not produced requested public records regarding these matters. Shaw also asserts that in March 2000, the Library did not post signs ordered by the New Jersey Department of Health and Senior Services informing employees of the asbestos hazard; nor did the Library mention that hazard at a requisite "Right to Know" meeting. Additionally, Shaw claims that "Right to Know" meetings did not take place at the Library every two years, as mandated.

Finally, according to Shaw, the Library is required to maintain the building and its HVAC equipment pursuant to its on-site manuals and prints. Shaw claims, however, there are currently no library personnel who can read and follow these manuals and prints. The Library denies any wrongdoing.^{4/}

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. Based upon the following, I find that the complaint issuance standard has not been met.

^{4/} Local 68 was given the opportunity to file a position statement, but declined to do so.

Herbert H. Shaw is employed by the Library in its facilities department and is represented by Local 68. During the course of his approximately 15 year employment with the Library, he alleges he has made several complaints about safety and health hazards and violations in the Library.

On August 4, 2004, the Library involuntarily transferred Shaw to its North End Branch, effective August 18, 2004. Shaw protested the transfer, and requested in writing that Local 68 appeal the transfer. Shaw then filed the instant charge on August 17, 2004.^{5/}

ANALYSIS

Shaw's allegations do not meet our complaint issuance standard and are, therefore, dismissed.

None of his allegations are tied to any activity protected under our Act. In particular, there is no causal connection alleged between any activity protected by the Act and Shaw's involuntarily transfer, or to any other of the Respondents' alleged illegal actions, including the allegation that the Respondents' are unlawfully conspiring to foster patronage through the staffing of the Library with incompetent personnel.

Moreover, Shaw's allegations are outside of our jurisdiction. They concern alleged safety and health breaches,

^{5/} Shaw's charge does not allege any specific allegations of wrongdoing by Local 68.

including "Right to Know" Act violations. Shaw complains that the Library is an "asbestos laden fire trap" full of fire and building code violations, and that it is staffed with unqualified, "patronage" employees. He further claims that the Library has not produced public records regarding the violations and that it has not held required "Right to Know" meetings and posted notices. Such allegations may implicate other statutory protections covered by other state agencies but they do not state an allegation of an unfair practice under our Act and thus are not within the Commission's jurisdiction. Shaw's allegation concerning the Library's failure to post a notice regarding the asbestos hazard in March 2000, even if viable, is outside our six month statute of limitations set forth in N.J.S.A. 34:13A-5.4(c).

In addition, Shaw raises no allegations or facts to support that N.J.S.A. 34:13A-5.4a(7) or b(5) were violated. His obligation was to allege which Commission rule or regulation that the Respondents' have violated. See Burlington Tp. Bd. of Ed., D.U.P. 97-31, 23 NJPER 152 (¶28073 1997). He failed to do so; therefore, these allegations are dismissed.

Further, the Commission has held that an individual employee does not have standing to assert a 5.4b(3) violation. Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978); Tp. of Edison (Cies), D.U.P. No. 99-15, 25 NJPER 274 (¶30116 1999). Therefore, this allegation against Local 68 is dismissed.

Shaw's unfair practice charge fails to allege any specific violation of our Act by Local 68. Section 5.3 of the Act empowers a union 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. Section 5.3 specifically links the power to negotiate and administer with the duty to represent all unit employees "without discrimination and without regard to employee organization membership." 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. Those standards have 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); Carteret Ed. Assn. (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390, 391 (28177 1997). Even an organization's negligence in processing grievances, standing alone, is not sufficient to establish a breach of its duty of fair representation. See Glen Ridge Ed. Assn (Tucker), P.E.R.C. No. 2002-72, 28 NJPER 251 (¶33095 2002); OPEIU

(Wasilewski), P.E.R.C. No. 98-131, 24 NJPER 256 (¶29122 1998); Printing and Graphic Communication, Local 4, 249 NLRB 88, 104 LRRM 1050 (1980); Service Employees Int'l Union, Local No. 579 AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977).

Here, there is no evidence or allegation that Local 68 acted arbitrarily, discriminatorily or in bad faith towards Shaw. Further, Shaw has not presented facts of any discrimination against him that is intentional, severe, and unrelated to legitimate union objectives. Amalgamated Assn. See also Rutgers and AFSCME (Searight), D.U.P. 97-1, 19 NJPER 426 (¶24192 1993).

In fact, Shaw fails to specify any alleged unlawful actions by Local 68 and thus his charges against the union lack the specificity required by N.J.A.C. 19:14-1.3(a)3. This rule provides that a charge must contain the following:

A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

Shaw simply indicates in the attachments to his charge that he requested that Local 68 appeal his transfer; he does not specify the time and place of any alleged unlawful actions by Local 68 or the names of any Local 68 agents who allegedly committed any unlawful actions with respect to his request. Moreover, facts must be stated in the charge itself; a charging

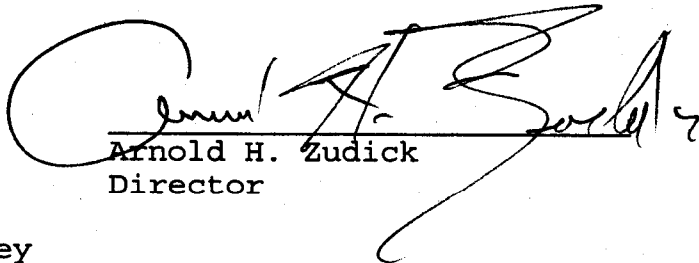
party may not simply attach a packet of documents to its charge as a substitute for a concise statement of facts. Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-030, 27 NJPER 25 (¶32014 2001). Thus, pursuant to N.J.A.C. 19:14-1.3(a)(3), I dismiss the allegations against Local 68. See CWA and Williams, D.U.P. No. 95-7, 20 NJPER 417 (¶25213 1994).

Based on 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.^{6/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE
DIRECTOR OF UNFAIR PRACTICES


Arnold H. Zudick
Director

DATED: December 7, 2004
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 December 20, 2004.

6/ N.J.A.C. 19:14-2.3.