

D.U.P. No. 2009-1

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

In the Matter of

CWA LOCAL 1084,
Respondent,

-and-

Docket No. CI-2007-066

DONNA LYNN BURNS-MELTZER,
Charging Party.

CAMDEN COUNTY BOARD OF SOCIAL
SERVICES,
Respondent,

-and-

Docket No. CI-2007-067

DONNA LYNN BURNS-MELTZER,
Charging Party.

SYNOPSIS

The Director of Unfair Practices issues a decision dismissing certain unfair practice allegations and issuing a complaint on the remaining allegations filed by an individual Charging Party against her employer and collective negotiations representative.

The Director dismisses allegations of violations of 5.4a(5) and 5.4b(3) of the Act finding that the Charging Party lacks standing to assert those allegations, inasmuch as the duty to negotiate in good faith codified in those sections runs to the majority representative and the employer, respectively.

The Director dismisses allegations that the employer and union engaged in collusion when, during negotiations for a collective agreement, they made changes in existing contracts terms in exchange for other benefits/concessions. Likewise, the Director finds that no facts suggest collusion on the part of the union and the employer when the union did not present certain changes made prior to a membership ratification vote.

The Director determines that the complaint issuance standard had not been met as to the union's alleged breach of its duty of fair representation either with regard to processing and settling

a grievance on behalf of the Charging Party or in its negotiations of a successor collective negotiations agreement. The 5.4b(1) allegation as to those assertions is dismissed.

Allegations involving conduct by the employer and/or union which occurred prior to December 7, 2006 are dismissed as untimely under N.J.S.A. 34:13A-5.4c.

Alleged violations of New Jersey Department of Personnel regulations are dismissed as beyond the Commission's jurisdiction.

The Director determines that the Charging Party has not identified any Commission rule or regulation which the union allegedly violated pursuant to 5.4b(5). This allegation is dismissed.

The Director orders issuance of a Complaint and Notice of Hearing on the allegation that the employer violated 5.4a(1) of the Act by interfering with, coercing or restraining the Charging Party in the exercise of her right to complain/grieve over its promotional procedures; and, that the employer's refusal to timely release her to a new position violated §5.4a(1).

The Director also orders issuance of a Complaint on the allegation that the union violated 5.4b(1) by allegedly interfering with, restraining or coercing the Charging Party in the exercise of her right to file grievances and unfair practice charges.

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Appearances:

For the Respondent, CWA Local 1084
Weissman and Mintz, attorneys
(Rose Cipparulo, of counsel)

For the Respondent, Camden County Board of Social
Services
Capehart and Scatchard, attorneys
(Michael Heston, of counsel)

For the Charging Party,
Guerin and Meltzer, attorneys
(Martin C. Meltzer, of counsel)

DECISION

On June 7, June 26, July 19 and August 17, 2007, Donna Lynn Burns-Meltzer (Burns-Meltzer or Charging Party) filed an unfair practice charge and amended charges against her majority representative, CWA Local 1084 (Local 1084 or the Local). On

June 7, Burns-Meltzer also filed an unfair practice charge against her employer, Camden County Board of Social Services (Board).

Burns-Meltzer alleges that Local 1084 violated section 5.4b(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A- et seq. (Act).^{1/} The charge filed against the Board alleges that it violated section 5.4a(1) and (5) of the Act.^{2/}

Burns-Meltzer alleges that in March 2006, Local 1084 refused to provide her with a grievance form or refused to file a grievance on her behalf contesting the Board's posting of a "promotional opportunity" for the title, human service specialists III, based upon an expired eligibility list, and without having conducted a proper competitive open testing for

^{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; (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."

^{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; (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."

the position. Burns-Meltzer asserts that she was denied a position after complaining to the Department of Labor about the expired list. She also alleges that in March 2006, the Local's grievance representative told her she could not file a grievance and threatened her for seeking to pursue one.

Burns-Meltzer also alleges that in or around April 2007, Local 1084 refused to file a grievance or unfair practice charge contesting the Board's unilateral termination of a "perfect attendance incentive day." She also alleges that in or around January 2007, while the Board and Local 1084 were negotiating a successor collective negotiations agreement, Local 1084 refused to file a grievance contesting the Board's decision to unilaterally increase employees' health benefit co-pays without negotiations. She alleges that in January or February 2007, Local 1084 presented a tentative negotiations agreement to its membership. One proposal included a two year phase-out of a lump sum payment upon retirement benefit for accumulated sick leave up to \$18,000. The benefit had been included in the parties' expired contract. Burns-Meltzer alleges that the Local disregarded the expressed opposition of a minority of unit employees, including herself, to the discontinuation of the benefit.

Burns-Meltzer alleges that on or about April 28, 2007, she filed a grievance seeking her immediate transfer to the title, social worker, and that Local 1084 failed to process her

grievance in retaliation for her having protested the Board's earlier failure to provide a new testing period for the human services specialist III title. She also alleges that Local 1084 delayed (from February 2007 through June 2007), providing unit members with copies of the new collective negotiations agreement. She also alleges that in June 2007, Local 1084 had "intentionally misrepresented" various negotiated terms and conditions of employment in a comparison of several terms presented to the membership before ratification and as set forth in the final agreement.

Finally, Burns-Meltzer alleges that on June 27, 2007, the Local violated the Act when the president told members at a special general membership meeting that an unfair practice charge had been filed by a member; that he made defamatory remarks about her, opining that all of the charges were "fabrications" and that the Local "did not need members like that." Burns-Meltzer did not attend the meeting.

Burns-Meltzer alleges that in or about March 2006, the Board violated the Act in bypassing her for a promotion to human services representative III after she had reported to the New Jersey Department of Personnel (DOP) that it had failed to provide a new certification list for posting after the previous list had expired. Burns-Meltzer also alleges that the Board bypassed her for promotion because she contacted Local 1084 to file a grievance over the alleged violations of the parties'

collective negotiations agreement concerning promotions. Burns-Meltzer also alleges that the Board unilaterally changed health insurance co-pay terms and eliminated an incentive day for perfect attendance without negotiations. She alleges that the negotiated agreement between the Board and Local 1084 to phase out the maximum \$18,000 retirement benefit for accumulated sick leave is illegal and collusive, violating public policy and section 5.4a(5) of the Act. Burns-Meltzer generally alleges that the Board failed to negotiate in good faith during negotiations with Local 1084 for a successor agreement.

Burns-Meltzer alleges that in April 2007, the Board delayed placing her in the social worker operational unit in retaliation for her 2006 protest of the Board's use of an expired promotion list, and in retaliation for her recent protest of the collective negotiations agreement signed by the Board and Local 1084. Finally, Burns-Meltzer alleges that the differences between the final version of the 2006-2009 collective negotiations agreement, compared to the terms presented to the Local membership for ratification are the result of collusion between the Board and Local 1084.

Local 1084 and the Board filed replies. Both contend that certain allegations are untimely; that the allegations regarding promotional regulations are beyond the Commission's jurisdiction; that changes in the State Health Benefits Plan (SHBP), including prescription and physician co-pays, are controlled by statute,

and that as a member of the SHBP, the Board is subject to the changes.

Local 1084 denies that it refused or failed to represent Burns-Meltzer in her dispute concerning her promotion to social worker, or that it restrained, coerced or retaliated against her for opposing its negotiations proposals. Local 1084 also contends that it has fulfilled its obligation to represent the unit in the best interests of all members of the unit in contract negotiations and grievance processing. The Local denies any act of collusion with the Board and asserts that a majority of the Local members ratified the contract, pursuant to an internal ratification procedure over which PERC has no jurisdiction.

The Board argues that its negotiations with Local 1084 were at arms length, conducted in good faith and ratified including the phase-out of the accumulated sick-leave retirement pay-out, by the majority of the Local's unit. It denies any facts suggesting collusion between it and Local 1084. It also denies that it bypassed Burns-Meltzer for any promotion; denies that she was among the top scorers compared to other tested employees, and denies that she would have been selected for the position if it had been filled.

The Board also asserts that the perfect attendance incentive plan was not a term of the parties' collective negotiations agreement and that it had the right to discontinue the practice. Finally, the Board argues that it has no policy of reassigning

employees within 2 weeks of their promotions and that such reassignments depend upon the Board's staffing and business needs. The Board argues that it began to pay Burns-Meltzer at the social worker rate by April 23, 2007, shortly after her notification of promotion and denies that it retaliated against her in any way.

An exploratory conference was conducted in these cases by a Commission staff agent on August 23, 2007. The staff agent attempted to facilitate a settlement at the conference and as recently as January 29, 2008, without success. The case was held in abeyance over the summer of 2008 at the request of the Charging Party's attorney.

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. The following facts appear:

1. Camden County Board of Social Services is a public employer within the meaning of the Act. CWA Local 1084 is the exclusive collective negotiations representative of a unit of all non-supervisory employees, except principal clerks and investigators, employed by the Board. The Board and Local 1084

signed a collective negotiations agreement effective from January 1, 2006 through December 31, 2009.

2. The parties' previous negotiations agreement expired on December 31, 2005. In early 2006, the Board and Local began collective negotiations for a successor agreement.

Among the topics proposed in negotiations were wages, changes in health benefits programs (including prescription and physician co-pays) and employee contributions to health care premiums. Also discussed were proposed changes to accumulated sick leave benefits for employees upon retirement. The negotiations continued through 2006 to late January or early February 2007, when the Board and the Local entered into a tentative agreement.

3. Before February 1, 2007, the Local conducted a meeting with unit members to outline the proposed changes in wages, health benefits and accumulated sick leave. On or about February 1, 2007, Local 1084 conducted a secret ballot ratification vote among its members. The majority of unit employees voted to ratify the proposed 2006-2009 contract.

4. Donna Lynn Burns-Meltzer is a 23 year employee of the Board. She currently holds the position of social worker in the adult protective services unit. Before April 23, 2007 Burns-Meltzer held the position of human services specialist II in the medical unit.

5. On or about March 20, 2006, the Board posted a notice for an available human services specialist III position in the medical department. Burns-Meltzer attempted to file a grievance regarding the posting, alleging that it violated DOP regulations and Articles 5 and 21 of the parties' collective negotiations agreement (pertaining to DOP regulations and to seniority). Disputes arising under Article 23 are considered non-contractual and ineligible for arbitration. Burns-Meltzer requested a grievance form but it appears she was not provided one.

6. Article 19 of the parties' collective negotiations agreement, "Grievance Procedure", provides in a pertinent part:

A. Purpose

2. Nothing herein contained shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the Administration, and having the grievance adjusted without the intervention of the Union.

B. Definitions

1. The term 'grievance' shall mean an allegation that there has been:

b. Inequitable, improper, unjust application or misinterpretation of rules or regulation, existing policy, or orders applicable to the Board, which shall be processed up to and including the Board and shall hereinafter be referred to as 'non-contractual grievance'.

2. The term 'grievant' shall mean an employee, a group of employees or the Union (emphasis added).

D. Steps of the Grievance Procedure

Step 1

a. The grievant and/or his/her shop steward shall present the written grievance and a request for a hearing to the appropriate Assistant Administrative Supervisor and Immediate Supervisor within twelve (12) working days of the occurrence complained of or within twelve (12) working days after he/she would reasonably be expected to know of its occurrence. Failure to act within said twelve (12) days shall be deemed to constitute an abandonment of the grievance (emphasis added).

Steps 2, 3, and 4 also allow the employee/grievant to present his/her grievance without assistance of the Local. The grievance procedure does not require that a grievance be written on a particular form; it merely requires that it be written.

The Local claims that in March 2006, Burns-Meltzer and her attorney met with the Local 1084 chief shop steward at the Local's hall. The purpose of the meeting was to discuss the alleged violations of the contract concerning the Board's 2006 promotional postings. The Local asserts that the shop steward informed Burns-Meltzer that he had met with the Board's administrators and that no contract violation had occurred.

7. On April 9, 2007, Burns-Meltzer was notified that she had been selected for her (current) social worker position and would be scheduled to attend training. Burns-Meltzer was not released to her new position in the adult protective services unit (on a full-time basis) until on or about June 11, 2007.

8. Burns-Meltzer requested to be assigned to her social worker position by mid-April 2007, about two weeks after she had received notification of her selection. She was told by the assistant administrator of the medical department that she was an essential employee of the medical unit and could not be released at that time.

9. On April 21, 2007, Burns-Meltzer grieved the Board's decision not to assign her to the adult protective services unit. Local 1084 met with Board representatives and agreed to settle the dispute by having Burns-Meltzer receive the promotional salary increase for the social worker position beginning April 23, 2007, the date she began training in her social worker title while she was still at the medical unit. On June 8, 2007, the Local wrote to Burns-Meltzer, informing her of the settlement and advising that the Board had not moved Burns-Meltzer to the new unit earlier because of staffing problems in the medical department. Local 1084 contends that because the Board agreed to their request to have Burns-Meltzer paid at the higher rate as of April 23, 2007, it agreed to provide the Board more time to deal with the staffing needs of the agency. The Local determined that the matter was settled satisfactorily; it nevertheless informed Burns-Meltzer that she could use personal legal counsel regarding the matter.

10. On June 11, 2007, Burns-Meltzer learned that beginning that day she had entered a 90-day probationary period, at the end

of which she would attain permanent status in the social worker title, pursuant to DOP regulations. Her status in the position would be retroactive to June 11, 2007. On the same date, two other unit members received the same notification as to their promotions. Burns-Meltzer's salary increased to the social worker rate on April 23, 2007.

11. The Board is a participant in the New Jersey State Health Benefits Plan (SHBP). All Board employees represented by Local 1084 are covered by the plan. In January 2007, the State modified certain provisions of the plan. Among the changes were increases in physician and prescription co-pay amounts. Local 1084 and the Board were engaged in negotiations at that time and incorporated the State's changes into their negotiations. No grievances were filed by Local 1084 over the co-pay changes.

12. On January 16, 2007, the Board wrote a letter to Local 1084's president, advising that no contributions for employee health care would be sought for the duration of the parties' negotiations agreement (expiring on December 31, 2009). Such contributions were permitted under the SHBP modifications.

13. In 1987, the Board instituted a "non-contractual program," providing up to three vacation days to all administrative personnel attaining perfect attendance within a calendar year. This incentive was not negotiated with Local 1084 and was never included in the parties' collective negotiations agreements; it was re-authorized by the Board each year until

2007. On November 22, 2006, the Board adopted a recommendation in public session to discontinue the program effective January 1, 2007, due to staffing shortages. Local 1084's president attended the session and did not challenge the Board's action. On January 10, 2007, the Board advised employees that the incentive had not been renewed for 2007 and that they would be rewarded in some other manner.^{3/}

The Local asserts that since February 2007, it has met with the administration in attempts to have the incentive restored, a fact reported to Burns-Meltzer at that time. On May 4, 2007, the Board's director wrote a letter to the Local 1084 president, advising that the incentive would be reviewed later in 2007, at which time the Board would consider other proposals.

14. In February 2007, the Board and the Local reached a tentative negotiations agreement and the Local presented the terms to its members at a membership meeting. During the meeting, the provision to phase out the accumulated sick leave pay-out upon retirement was announced. A minority of unit members requested that the Local's team ask the Board to withdraw the proposal. The Local denied the request, advising the membership that it could vote to accept or reject the entire tentative agreement; that all proposals were contingent upon each

^{3/} Burns-Meltzer asserts that the elimination of the incentive day occurred on or about April 30, 2007 and at some time thereafter members of the unit informed the Local of the change and that it refused to file a grievance or an unfair practice charge concerning the change.

other; and that it would be acting in bad faith if it went back to the Board on the sick leave item without the members having the opportunity to vote on the entire proposal.

15. A majority of the Local 1084 members ratified the tentative agreement in early February 2007 and the Local and the Board executed the 2006-2009 contract on February 22, 2007.

16. On June 7, 2007 the Local provided copies of the new contract to unit members, including Burns-Meltzer.

17. Burns-Meltzer compared the terms of the expired contract with those set forth in the new contract. She found that the new agreement omitted several provisions from the expired agreement and included provisions which had not appeared in the old one. Specifically, regarding Article 16, Health Insurance Coverage, and Article 23, Seniority, Job Openings and Lateral Transfers, Burns-Meltzer asserts that the executed contract contains changes that were not presented to the unit for ratification.

18. Local 1084 has provided us with a copy of the document distributed to the membership in advance of the ratification vote in February 2007. A comparison of that document with a copy of the current agreement shows (in Article 16) changes in employee dependent coverage only. The pre-ratification document lists Article 23 as "closed." It does not set forth any change from the expired contract. There are differences in both articles between the old and new contract which are not reflected in the

Local's list of items discussed with its members at the pre-ratification meeting.

19. On June 27, 2007, the Local 1084 president held a general membership meeting and informed its members of the pending unfair practice charges filed by one of the Local's members. Burns-Meltzer's name was not mentioned and she was not in attendance. Burns-Meltzer alleges that the Local president stated that the charges were fabrications; that the person who filed the charge was a full member, and that ". . . the union did not need members like that." Sometime after the June 27 meeting other Local members asked Burns-Meltzer why she was suing the Local.

ANALYSIS

Our Act requires that an unfair practice charge be filed within six months of the date that the unfair practice occurred. N.J.S.A. 34:13A-5.4c. Charges filed later than six months after the date of the unfair practice are untimely unless the charging party was prevented from filing within the statutory period. See Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978).

The charges were filed on June 7, 2007. Burns-Meltzer has alleged no facts or circumstances which might have prevented her from filing timely allegations. Accordingly, I find that the alleged unfair practices which occurred before December 7, 2006, are not within the statutory period and must be dismissed. They include the Local's alleged March 2006 refusal to provide a

grievance form and/or file a grievance on behalf of Burns-Meltzer concerning the Board's posting of a promotional opportunity; an alleged March 2006 threat by a Local official to Burns-Meltzer for requesting to file a grievance; the Board's posting of a promotional opportunity in March 2006 based on an expired eligibility list and the Board's alleged March 2006 by-pass of Burns-Meltzer for the promotion.

Burns-Meltzer has alleged that the Board violated 5.4a(1) and (5) and that Local 1084 violated 5.4b(1), (3) and (5) by their actions or failures to act beginning in January and February 2007. As an individual, Burns-Meltzer lacks standing to assert a 5.4a(5) violation of the Act. A 5.4a(5) violation occurs when an employer fails to negotiate an alteration of a mandatory subject of negotiations with the majority representative; knowingly refuses to comply with the terms of the collective negotiations agreement; or refuses to process grievances presented by the majority representative (emphasis added). The employer's duty to negotiate in good faith runs only to the majority representative. N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980) aff'd NJPER Supp. 2nd 101 (¶85 App. Div. 1981); Union Cty. Ed. Services Com'n and Westlake EA (Kelly), D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984). There is no duty for an employer to negotiate with an employee.

Burns-Meltzer alleges that Local 1084 violated section 5.4b(3) of the Act. This section prohibits employee organizations, their representatives or agents from: "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" (emphasis added).

The majority representative's duty to negotiate in good faith extends only to the public employer. Burns-Meltzer also lacks standing to assert a 5.4b(3) violation based upon the facts provided here. Accordingly, I dismiss Burns-Meltzer's 5.4a(5) and 5.4b(3) allegations.

She has also alleged that Local 1084 violated section 5.4b(5) of the Act. Burns-Meltzer has not identified any Commission rule or regulations which Local 1084 violated. Accordingly, I dismiss all allegations pertaining to that subsection of the Act.

Alleged violations of New Jersey DOP regulations are beyond PERC's jurisdiction. We dismiss allegations that the Board violated any of them.

5.4a (1) - Board coercion, retaliation, restraint: April 2007
Promotion to Social Worker

Burns-Meltzer alleges that the Board coerced and restrained her exercise of the right to complain about and grieve its promotional procedures. She alleges that the Board's refusal to timely "release" her to her new social worker position was

coercive and retaliatory and was intended to restrain other employees who might protest the Board's promotion procedures or alleged elimination of contractual benefits.

Section 5.4a(1) prohibits public employers from interfering with, restraining or coercing employees in the exercise of rights protected by our Act. Facts have been alleged indicating that the Board or its representatives may have acted in a manner which tended to interfere with, coerce or restrain Burns-Meltzer and other employees. I will issue a Complaint on this allegation.

5.4b(1) Local 1084 interference, restraint, coercion: June 27, 2007 special membership meeting; representation/Burns-Meltzer's transfer to the adult protective services unit.

Burns-Meltzer alleges that the Local breached its duty of fair representation by not pursuing a grievance on her behalf contesting the Board's failure to reassign her to the adult protective service unit within two weeks of receiving notice of her selection for the social worker position.

Section 5.3 of the Act empowers an employee representative 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 set forth 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 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983). Majority representatives are not obligated to pursue every grievance. Rather, a union is allowed a "wide range of reasonableness in servicing its members." Ford Motor Company v. Huffman, 345 U.S. 330, 337-338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953).

Burns-Meltzer argues that she could not file her own grievance (based upon her reading of the contractual grievance procedure). She wrote in her charge however, that she filed a grievance on her own behalf. The grievance procedure in the collective agreement permits the employee/grievant to file a grievance and appeal it through Step 4 of the procedure. No facts suggest that Local 1084 prohibited Burns-Meltzer from filing a grievance; it appears that Local 1084 met with the Board's administrators concerning her complaint. Local 1084 arranged for Burns-Meltzer to be paid at the social worker salary for at least one month before she actually began working in that position. The Local determined that this settlement resolved the grievance, implicitly accepting as correct the Board's argument that it could not have reassigned Burns-Meltzer earlier because of staffing needs in the medical department.

No facts show that the Local acted discriminatorily, arbitrarily or in bad faith in settling Burns-Meltzer grievance, or by accepting the Board's justification for delay. A union is not bound to obtain every remedy sought through a grievance and the fact that a grievant is not wholly satisfied with an outcome does not establish a violation of 5.4b(1).

I find that the Commission complaint issuance standard has not been met on this allegation of the charge and it is dismissed.

Local 1084 comments at June 27, 2007 special membership meeting

Burns-Meltzer alleges that Local 1084 intended to restrain, coerce and interfere with the exercise of her right to file grievances and charges under our Act. She asserts that on June 27, 2007, during a special membership meeting Local 1084's president told those gathered that a dues paying member was suing the union; that the charges were fabrications; and that the union "did not need members like that." Burns-Meltzer also asserts that after the meeting several Local 1084 members asked her directly why she was suing the union.

Section 5.4b(1) prohibits employee organizations, their representative or their agents from interfering with, restraining or coercing employees in the exercise of rights guaranteed by our Act. Facts alleged here indicate that Local 1084 through its Local president may have acted in a manner which tended to

interfere with, coerce or restrain Burns-Meltzer and other employees, I will issue a complaint on that allegation.

Negotiation of Changes in accumulated sick leave buyout

Majority representatives have wide latitude to negotiate contracts and process grievances. Ford Motor Company. Unions and other private organizations are also given wide latitude in adopting rules for internal governance. Calabrese v. PBA Local 76, 157 N.J. Super. 139, 146 (Law Div. 1978). The Commission will not intercede in intra-union disputes unrelated to allegations and proof that an unfair practice has been committed. See Teamsters Local 331 (McLaughlin), P.E.R.C. 2001-30, 27 NJPER 25, 27 (¶32014 2000) (the Commission "cannot police how a union conducts a ratification vote absent factual allegations tying specific ratification misconduct to a specific breach of the duty of fair representation in negotiations").

In this case, Local 1084 and the Board negotiated a complete agreement with certain increases in benefits exchanged for certain concessions in other benefits. Local 1084 presented a proposal (a negotiated change in accumulated sick leave buy-out upon retirement) to its members at a pre-ratification meeting. At the meeting, Burns-Meltzer presented concerns of a minority of employees regarding changes to the sick leave buy-out provision. The members voted to ratify the agreement knowing that the changed accumulated sick leave buyout was part of the deal. These facts do not suggest Local 1084 breached its duty of fair

representation concerning negotiations of the accumulated sick leave retirement buyout. This portion of the charge is therefore dismissed.^{4/}

Alleged unilateral change in attendance incentive

As previously discussed, only majority representatives have the right under the Act to contest an employer's unilateral changes in terms and conditions of employment. An individual employee has no standing to assert a 5.4a(5) violation. In this case, Local 1084 did not choose to dispute the Board's change in the attendance incentive by filing an unfair practice charge or formal grievance. Local 1084 asserts that it has been discussing the restoration of the incentive with the Board. The duty of fair representation implicates only that conduct which is arbitrary, discriminatory or done in bad faith. No facts suggest

^{4/} Burns-Meltzer argues that the New Jersey Superior Court Appellate Division holding in Morris School District Board of Education and Education Association of Morris, 310 N.J. Super 332 (1998) is applicable to the change in the accumulated sick leave buy out in the instant case. Morris is distinguishable from this case. In Morris, the Court found that the Association was not bound by a fact finder's recommendation that capped accumulated sick leave and that forfeited sick leave amounts above the cap. Neither party had proposed a cap, no negotiations contained cap proposals and the cap was first conceived by the fact finder. The Court affirmed the Commission's finding that by agreeing to be bound by the fact finder's report, the Association had not knowingly bargained away the sick leave benefits.

In this case, the facts indicate that the Board and Local 1084 negotiated the provision at issue; that Local 1084 knowingly agreed to eliminate the benefit during negotiations; and that Local 1084 members ratified the provision.

that Local 1084's conduct meets that legal standard.

Accordingly, I dismiss the 5.4a(5) and 5.4b(1) allegation of this charge pertaining to the perfect attendance incentive.

Changes in Articles 16 and 32 after ratification

There is no requirement under the Act that a majority representative conduct a ratification vote. If the majority representative conducts such a vote, the attendant procedures are normally an internal union matter over which the Commission has no jurisdiction.

In this case, Burns-Meltzer alleges that Local 1084 and the Board colluded by executing an agreement that included benefit changes which allegedly were not presented to unit members before the ratification vote.

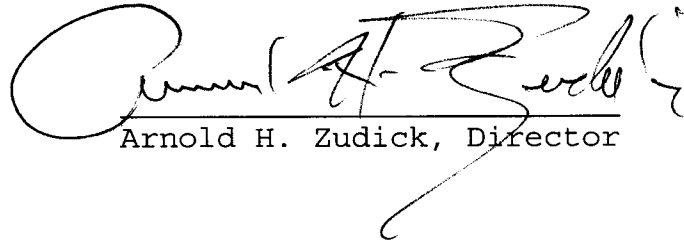
No facts suggest that the Board and Local conducted any covert communications, or conspired to enter into side agreements concerning the provisions of Articles 16 and 32. Consequently, I dismiss the allegation.

ORDER

A Complaint and Notice of Hearing will be issued upon those 5.4a(1) allegations that the Board coerced and restrained Burns-Meltzer's right to complain and grieve about the Board's promotional procedures; and that the Board's refusal to timely release her to her new social worker position violated the Act. Likewise, a complaint shall issue on the 5.4b(1) allegation that Local 1084 restrained, interfered with and coerced Burns-

Meltzer's right to file grievances and unfair practice charges.
All other allegations are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: September 10, 2008
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 September 22, 2008.