

H.E. NO. 2015-11

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BRIDGEWATER-RARITAN
TRANSPORTATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-2009-46

STAN SERAFIN,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Bridgewater-Raritan Transportation Association did not breach its duty of fair representation owed to unit member Stan Serafin when it declined to take his grievance to arbitration. Serafin's arguments that the Association was negligent in the processing of the grievance and acted in bad faith were determined to be without merit.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent
Zazzali, Fagella, Nowak, Kleinbaum & Friedman
(Jason E. Sokolowski, of counsel)

For the Charging Party
Stan Serafin, pro se

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On February 4, 2010, the Director of Unfair Practices issued a Complaint and Notice of Hearing regarding an unfair practice charge filed by Stan Serafin against his union, the Bridgewater-Raritan Transportation Association (Association or BRTA) (C-1A).^{1/} The charge alleges that the Association breached its duty of fair representation when it declined to take Serafin's

1/ "C" refers to Commission exhibits, "J" designates exhibits jointly submitted by the parties, "CP" refers to Charging Party's exhibit, "RA" refers to exhibits proffered by the Association and "RB" designates exhibits introduced by the Bridgewater-Raritan Regional Board of Education (Board); all of which were received into evidence at the hearing.

grievance to arbitration.^{2/} The grievance claimed that Serafin's contract to continue to work as a bus driver in the school district was wrongfully not renewed. The Association filed its Answer on February 17, 2010 (C-4).

On July 16, 2010, the Commission stayed the hearing in that matter until it could consider Serafin's appeal of the Director of Unfair Practices' decision not to issue a complaint against the Bridgewater-Raritan Regional Board of Education (Board) in a related charge. The Commission decided the appeal on August 12, 2010 and ordered that a complaint be issued on the claim against the Board and that the matter be consolidated with Serafin's complaint against the Association. Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 2011-1, 36 NJPER 296 (¶110 2010) (C-2).

On September 14, 2010, the Director of Unfair Practices issued a Complaint and Notice of Hearing against the Board (C-1B). The amended charge alleges that the Board terminated Serafin for filing a gender discrimination grievance thereby violating N.J.S.A. 34:13A-5.4a(1) and (3).^{3/} On the same day,

^{2/} The Director of Unfair Practices issued the Complaint on the N.J.S.A. 34:13A-5.4b(1) allegation of the charge. He dismissed the alleged violations of 5.4b(3) and (5) of the charge. Subsection 5.4b(1) of the Act prohibits 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/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,
(continued...)"

the Director issued an Order consolidating the cases against the Association and the Board (C-3). On September 27, 2010, the Board filed an Answer and Affirmative Defenses (C-5).

Before the hearing commenced, the Board filed a motion to dismiss, which I denied on March 22, 2011. I conducted the hearing on April 12, 2011 (Day 1), April 13, 2011 (Day 2), June 9, 2011 (Day 3), July 7, 2011 (Day 4), October 27, 2011 (Day 5), December 20, 2011 (Day 6), January 24, 2012 (Day 7), June 12, 2012 (Day 8), August 29, 2012 (Day 9), November 28, 2012 (Day 10), November 29, 2012 (Day 11), December 18, 2012 (Day 12), February 6, 2013 (Day 13), February 21, 2013 (Day 14), April 9, 2013 (Day 15), April 17, 2013 (Day 16) and May 29, 2013 (Day 17). At the hearing, the parties examined witnesses and presented documentary evidence.

On Day 13 of the hearing, the Board made another motion to dismiss on the record on the grounds that Serafin had not worn a seat belt while driving a school bus. I denied the Board's motion on the record. The Board requested that I reconsider my ruling and an opportunity to submit a brief in support of its

3/ (...continued)
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."

motion, which I granted. After reviewing the Board's brief, I affirmed my decision on the record and denied the motion to dismiss in a letter dated March 8, 2013.

During the last day of hearing (Day 17; May 29, 2013), the Board again proffered a motion to dismiss on the record. The basis for the motion was that the evidence introduced over the course of the hearing demonstrated that Serafin's asserted protected activity occurred after the Board had decided not to renew his employment and therefore could not be the reason for his non-renewal. This time I granted the motion and dismissed the Complaint (C-1B, docket number CI-2009-45) against the Board on the record. The hearing continued on the Complaint against the Association.

Serafin appealed my decision to dismiss the Complaint against the Board to the Commission. The Commission determined that there was "no basis to find a violation of the Act," affirmed my decision and dismissed the Complaint against the Board. Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 2014-45, 40 NJPER 335 (¶121 2014).

The only case remaining is the one against the Association alleging a breach of the duty of fair representation for not taking Serafin's grievance to arbitration (C-1A, docket number CI-2009-46). After extensions of time were provided upon request, Serafin and the Association simultaneously filed post-

hearing briefs. Based upon a review of the entire record, I make the following:

FINDINGS OF FACT

1. Stan Serafin was hired to work as a bus driver by the Board in October, 2007 (13T149).^{4/} The Board is a public employer within the meaning of the Act. Serafin was a public employee represented by the Association, which is an employee representative within the meaning of the Act (1T11-1T12).

2. The Board and Association were parties to a labor agreement for the period of July 1, 2007 to June 30, 2010 (J-1). That agreement contained a grievance procedure which provides in pertinent parts:

Article III
Grievance Procedure

A. Definitions

1. A "grievance" shall mean a claim by an employee . . . that there has been . . . a violation of Board policy or this Agreement. A grievance to be considered under this procedure must be initiated by the employee within ten (10) work days of the time the employee knew or should know of its occurrence.

B. Purpose

2. Nothing herein contained shall be construed as limiting the right of any bus driver or group of bus drivers having a

^{4/} "T" designates transcript with the number preceding the "T" representing the day of hearing and the number following the "T" indicating the page of the transcript.

grievance to discuss the matters informally with the Transportation Coordinator, and having the grievance adjusted without intervention of the Association, provided the adjustment is not inconsistent with the terms of this Agreement. [J-1]

There are four levels of appeal provided by the contractual grievance procedure. Level One provides that:

A bus driver or group of bus drivers with a grievance shall first verbally identify the matter as a grievance and discuss it with the Transportation Coordinator either directly or through the Association's grievance representatives, with the objective of resolving the matter informally. If the aggrieved party . . . is not satisfied with the disposition of his/her grievance . . . after the grievance was discussed at Level One, the grievant must notify the Grievance Representative of his/her request to process a formal grievance within five (5) work days after the decision was made . . . or ten (10) work days after the grievance was discussed with the Transportation Coordinator. [J-1]

The second level states that:

If the grievance is not resolved to the satisfaction of the grievant . . . within five (5) work days of its written submission to the Transportation Coordinator then the Grievance Representative shall submit the written grievance to the Business Administrator within ten (10) days of its written submission to the Transportation Coordinator. The Business Administrator shall meet with the grievant and the Association's Grievance Representative to review the grievance. . . . [J-1]

Level Three of the grievance procedure permits the aggrieved employee to ask the Board to review the grievance if he/she is not satisfied with the Business Administrator's written decision.

Upon request by the aggrieved employee or at its option, the Board will hold a hearing and render a written decision within "thirty-(30) business office workdays of receipt of the grievance . . . or the date of the hearing . . . , whichever comes later" (J-1).

The final step of the grievance procedure, Level Four, allows the aggrieved person to request in writing that the Association take the grievance to arbitration. It specifically provides:

If the Association determines that the grievance is meritorious for further consideration, it must submit the grievance to the Public Employment Relations Commission for arbitration within ten (10) work days after the receipt of the request by the aggrieved person and shall notify the Board of such submission.

The decision of the Arbitrator shall be binding upon the parties . . . [J-1]

3. Serafin, like all bus drivers in the district, are employed under one year contracts running from September 1 through June 30, which can be renewed annually by the Board (J-1; 2T83; 11T125; 14T152-14T154).

4. About a week after being hired by the Board, Serafin joined the Association (sometime in October 2007), also known as BRTA (12T31, 12T34). His co-worker, Carol Weinreich, also a bus driver, was the President of BRTA at that time (4T156; 4T165-4T166; 10T26; 12T23, 12T31, 12T34).

5. According to Serafin, he did not have a good working relationship with Weinreich. In November 2007, Weinreich backed out of driving a class trip when she became aware that Serafin was driving the second bus on the trip (12T21-12T22). At union meetings, Weinreich was dismissive of Serafin when he attempted to discuss work-related issues (12T25-12T27).

6. In accordance with the Association's Constitution and By-Laws, elections were held in April 2008 for officers of BRTA (CP-22; 2T212). Serafin was elected as Vice President of the Association (5T97; 9T119; 12T165; 13T198; 17T85). Weinreich was re-elected as President, Kim Deon was re-elected as Secretary and Mark Lewis was elected as Treasurer of BRTA (5T97; 9T119, 10T26; 17T85). Though the Constitution and By-Laws called for newly elected officers to be installed at the following September membership meeting, it was the custom and practice of the Association that newly elected officers immediately assume their positions. Thus, in April 2008, Weinreich was President, Serafin was Vice President, Deon was Secretary and Lewis was Treasurer of BRTA (CP-22; 2T213; 4T156-4T157; 5T97; 9T119; 10T26; 13T198; 17T85).

Before the April 2008 election for union officers, Jennifer McCarthy was the Chairperson of the Grievance Committee. She went out on medical leave. Sometime in April 2008, but after the election, Ron Schmidt became the Grievance Committee Chairman

(10T82; 17T82, 17T84-17T85, 17T219). Schmidt had no experience so Weinreich, who had been Grievance Chairperson before she was elected local president, assumed the role of Grievance Chair (in addition to her duties as President) and trained Schmidt from April until August 2008 (4T160, 4T168-4T169; 11T80-11T82; 17T182, 17T220-17T222).

7. Jan Donlay was the Transportation Dispatcher and Jenisse Peatick was the Transportation Coordinator of the Board in 2007 and 2008. Both had supervisory responsibilities over Serafin with Peatick serving as his immediate supervisor (CP-1; CP-9; CP-10; RB-18; 3T78; 4T170-4T171; 11T114; 12T24-12T25, 12T29-12T30, 12T38; 13T24; 14T171).

8. On April 4, 2008, Serafin's job performance was evaluated by Donlay and approved by Peatick. Serafin received a "fair" overall job rating and the evaluation form indicates that he would not be recommended for reappointment for the following school year (RB-18; 16T61-16T64).

9. While driving on his assigned bus route on April 22, 2008, Serafin hit a tree branch while yielding to pedestrians walking on South Shore Road. The branch scratched and dented the roof of the bus and broke the center marker light lens (CP-7; RA-4). Serafin told Donlay about the accident. After consulting with the school district's mechanic, Serafin replaced the broken light lens the day after the accident (4T193-4T195; 14T171,

14T173-14T174). He did not tell his supervisors that he had replaced the marker light lens (14T176).

10. School district policy regarding motor vehicle accidents and incidents are contained in the School Bus Driver Handbook. Each year, bus drivers are provided with a copy of the Handbook. Bus drivers must sign an acknowledgment that they received a copy of the Handbook. If the Handbook is revised any time during the year, the revised version is distributed and bus drivers must acknowledge receipt (4T41-4T42).

Serafin was given a copy of the Handbook when he commenced employment with the District in October 2007 (CP-31; 15T139, 15T142). The Handbook was revised on February 2008 and Serafin received a copy (CP-30; 15T142-15T143). The provision regarding reporting accidents or incidents was not changed between Handbooks (CP-30; CP-31; 15T147-15T149). Board policy provides that:

Duties: The driver of the school bus shall immediately notify, or cause to be notified the dispatcher and/or the Transportation Coordinator of any accident or incident resulting in any personal injury or property damage.

* * *

All accidents and incidents must be reported to the Transportation Coordinator. You must report minor accidents or scratches as well as major collisions or injuries of a serious nature. A full and complete accident or injury report must be filled out by the bus driver and submitted to the dispatcher. A

complete written report, with all required information, is to be made as soon as conditions permit, but no later than the next working day after the accident. Additional reports may be required.

* * *

The Department of Education form must be completed if there was personal injury or any property damage. The State Motor Vehicle form must also be completed if there was any personal injury, \$500 or more property damage and no police report. [CP-30 at p. 46]

11. The Board obtained an estimate to repair the damage to the bus that Serafin was driving on April 22nd. The estimated cost of repair was \$2,911.00 (CP-59).

12. As already mentioned, Serafin notified the dispatcher, Donlay, of the accident as is required by Board policy (CP-7; 4T193; 13T22; 14T171, 14T177; 15T161-15T162, 16T218). He did not, however, complete and submit the accident or incident forms the next working day (April 23) as is also required by Board policy (1T126; 2T66-2T67, 2T92; 4T25, 4T193, 4T230; 10T93; 14T181-14T182).

On Thursday, April 24th, Donlay gave Serafin a written reminder of his obligation to submit an accident report. Serafin did not submit an accident report. Serafin did not fill out an accident report because he felt that the occurrence did not rise to the level of an "accident" and that he thought by reporting the accident his personal auto insurance rate would increase (2T67; 12T37-12T38; 13T24-13T25; 14T170-14T171, 14T183, 14T186;

15T156; 16T206). At that point, Serafin had made up his mind that he would rather resign or be fired than fill out the report (2T69; 15T81-15T82, 15T84).

Later on April 24th, Serafin went to Peatick and told her that he was not going to fill out the accident report - even if that meant losing his job. Serafin took the form and in front of Peatick threw it in the garbage (CP-10; 15T84, 15T122-15T123; 16T209-16T210). By memorandum dated April 25, 2008, Peatick memorialized their meeting on April 24th and again directed him to submit an accident form by the end of the day (CP-58; 16T210).

13. Realizing that his job might be in jeopardy, Serafin contacted the NJEA uniserv representative for his Association, Mr. Henry John Klein (HJK) on April 23 or 24, 2008 (12T35; 17T185). Serafin chose to contact directly HJK because he believed he had a bad relationship with his local union president, Weinreich (2T66-2T67; 12T21-12T22, 12T28-12T29; 14T213). Weinreich was fine with HJK's guidance and involvement because she and the Grievance Chairman Schmidt were inexperienced and Serafin's termination was a possibility (10T109; 11T81-11T82, 11T123).

HJK advised Serafin that if he did not fill out the accident report as directed by his supervisor it was likely that he would be found to be insubordinate and terminated (2T88; 12T36; 14T188; 15T83, 15T188).

14. Serafin did not submit an accident report by the close of business on Friday, April 25th as directed by his supervisor Peatick (CP-10; CP-51; 14T181-14T182; 15T95-15T96). That weekend, Serafin began having second thoughts and on Sunday, April 27, 2008, left a message on Peatick's voicemail indicating that he would submit an accident form (CP-10; CP-51; 15T95-15T97).

15. By noon, Monday, April 28, 2008, Serafin still had not submitted an accident form. Consequently, he received from Peatick a memorandum summarizing the events which transpired since the April 22nd accident and a written warning for not submitting the required accident form (CP-9; CP-10; 1T159; 12T38; 13T49, 13T61).

16. HJK contacted Peatick. She assured him that if Serafin would submit the accident form he would not be terminated (1T151; 2T68). HJK contacted local president Weinreich and explained the situation to her. He asked Weinreich to go the next day (April 29) and try to convince Serafin to fill out and submit the accident form (1T149, 1T151; 2T71; 11T120).

17. In a last ditch effort to save Serafin's job, Weinreich went to Serafin at approximately 6:30 a.m. on April 29, 2008 in order to get him to fill out the accident form. Serafin was sitting in the driver seat of his assigned bus before his morning

bus run (CP-5; 10T49-10T50, 10T55, 10T124; 11T120-11T121; 14T169).

Weinreich entered the bus and stood on the first or bottom step. Before she could speak to Serafin about filling out the accident report, he ordered her to "get out of my bus" several times with an increasingly loud, hostile tone. He also said to Weinreich that if she did not get off his bus she would look funny trying to hold on to the side [of the bus] while going down the road (CP-5; 1T195; 10T119; 12T101; 15T105-15T106).

Weinreich left the bus frightened without speaking to Serafin about the accident form. She felt threatened by his remarks and reported the incident to the dispatcher, Donlay. She then went and drove her morning bus route (10T116, 10T119; 11T121-11T122).

18. After the altercation between Serafin and Weinreich on April 29th, Weinreich turned the entire matter over to HJK to manage and process. She felt threatened by Serafin and not experienced enough to provide him with adequate representation as his job would likely be in jeopardy (11T123).

19. HJK again tried to persuade Serafin to submit the accident form. He explained to Serafin that he would likely lose his job as a bus driver if he did not submit the form. Serafin told HJK that he would not fill out the accident form and that he was not concerned about losing his job. Serafin also indicated

to HJK that his primary concern was retaining his employer based medical insurance for the duration of his employment contract (ending June 2008) because he had a medical procedure scheduled for May. He asked HJK if he could arrange the continuation of his health benefits in the event the Board decided to fire him (12T36, 12T144; 14T188; 15T126-15T127).

20. Serafin's school bus was equipped with video cameras (CP-5; 12T95; 14T190-14T191). As a result of the incident with Weinreich, the Board reviewed the video. Not only did the Board see the April 29th exchange between Serafin and Weinreich, but it discovered Serafin committing other infractions of Board policy and motor vehicle regulations (CP-1; 2T80; 10T104, 10T105-10T107).

Peatick requested to meet with Serafin (CP-6). They met on May 1, 2008. At that meeting Peatick advised Serafin that she will not be recommending that Serafin's contract be renewed for the following school year because of his refusal to submit an accident report (insubordination), threatening co-worker Weinreich and committing infractions of Board rules and motor vehicle regulations (CP-1; 10T105-10T107; 12T121, 12T125; 13T84; 14T194-14T195; 15T86). Peatick memorialized what happened at the May 1st meeting in a May 5th memo to Serafin (CP-1).

HJK met with Serafin in the beginning of May to review everything (2T73-2T74, 2T76). They agreed that HJK would meet

with Peatick and review the video. HJK met with Peatick and viewed the video some time in the middle of May (1T20-1T21, 1T48; 2T78). At that meeting, Peatick gave HJK a copy of the May 5th memo memorializing her May 1st meeting with Serafin (2T82). After viewing the video, HJK concluded that Serafin had committed the violations cited in Peatick's May 5th memo (1T50-1T60, 1T194-1T195; 2T82, 2T137).

21. HJK reported his findings to Serafin after meeting with Peatick and reviewing the tape (1T49; 2T83). He confirmed to Serafin that the video showed Serafin threatening Weinreich and a host of Board and motor vehicle violations (1T50-1T60, 1T194-1T195; 12T138). Serafin wanted to view the tape himself (2T83; 12T125). Serafin was permitted to watch the video with one union representative (2T86).

Serafin attempted to view the video but was denied on three occasions (showed up at Peatick's office without an appointment, arrived with two other bus drivers who were not union representatives and demanded to view video with entire Association membership) (2T84-2T87; 4T185; 13T84; 15T207-15T209). HJK, at NJEA's cost and expense, retained attorney Arnold Mellk to counsel Serafin and specifically to assist in obtaining a copy of the video for Serafin to review (1T164-1T165, 1T169; 2T87, 2T130-2T131; 12T184-12T185; 14T219).

22. Before Serafin had an opportunity to meet with Mellk, he received a letter on or about May 20, 2008 from the Superintendent of Schools. The letter advised that Serafin's contract would not be renewed for 2008-2009 and that his health and dental benefits would terminate on September 1, 2008 (CP-44; 12T128, 12T152-12T153).

23. On May 21, 2008, HJK and Serafin spoke on the telephone. In that conversation, HJK referenced Peatick's May 5th memo (CP-1) thinking that Serafin had already received a copy of it. Serafin had not received the May 5th memo so HJK forwarded him a copy (12T140-12T143; 13T89; 14T195).

Up to this point, Serafin was fine about not being renewed for the 2008-2009 school year. He would finish out working the year (2007-2008) and his medical/dental benefits would be continued until September 1, 2008. However, once he read Peatick's May 5th memo, he became upset with what he believed to be false accusations (12T144, 12T148; 16TT125-16T127).

24. As was alluded to in Finding of Fact 2, aggrieved individuals have the contractual right to file grievances on their own behalf. Individual unit members can pursue a grievance through level three of the grievance procedure (Board level) but cannot take the grievance to level four (arbitration). Only the Association can pursue a grievance through arbitration (J-1; 2T104; 4T75; 14T70, 14T200, 14T221; 17T84, 17T142).

In the morning of May 23, 2008, Serafin, who was Vice President of the Association, filed a grievance on his own behalf, without seeking the assistance of HJK or the local leadership. The grievance alleged gender-based discrimination in the work place and a hostile work environment (CP-19). Serafin believed he had been treated disparately because certain women employees were allowed to see the bus video and he was not, and that he was non-renewed for the altercation with Weinreich while she was not disciplined at all. The grievance did not seek to renew Serafin's contract for the following year but rather demanded that Weinreich's contract also not be renewed for the succeeding year (CP-19; 12T150-12T151, 12T154; 15T203-15T205).

Early that afternoon (approximately 1:50 p.m. on May 23rd), Serafin was summoned to Peatick's office where he was informed that he would no longer be driving for the district, effective immediately, but would be paid until the end of the contract/school year (June 2008). He was reminded by Peatick of his ability to view the video with a union representative by appointment and was required to turn in his Board keys and identification (CP-19; 12T157-12T158).

25. Serafin was suspended with pay and benefits on May 23, 2008 until the expiration of his contract in June 2008. It was unusual for a bus driver in this district to be suspended with pay and benefits. Typically, the Board would terminate and cease

compensating a bus driver effective the day upon which the bus driver was no longer working for the district (2T12-2T13, 2T94; 4T191, 4T235-4T236; 11T126; 14T150, 14T197-14T198).

26. By letters dated May 29 and June 11, 2008, the Superintendent of Schools reminded Serafin that he was suspended with pay until June 30th and advised him that he was to "remain off all district premises" during the suspension. Serafin complied and did not enter school property without permission (CP-45; CP-46; 12T158, 12T160; 15T210).

27. Serafin still wanted to view the video (CP-5). Serafin met with attorney Mellk on May 28, 2008. The primary focus of the conference was to obtain the video so that Serafin could watch it (14T157-14T158, 14T163, 14T167-14T168).

Mellk obtained the video and Serafin viewed it on June 24, 2008 at Mellk's law office (CP-12; 12T186-12T187; 14T164-14T165). On June 27, 2008, Mellk wrote a letter to the Superintendent on Serafin's behalf indicating that the video did not show "any inappropriate behavior by Serafin" including threatening behavior toward Weinreich (CP-11). I find Mr. Mellk's comments contained in his June 27th letter to be advocacy and not factually accurate. I based this finding on my own review of the video (CP-5), the testimony of HJK where he disagreed with Mellk's assessment (1T96, 1T103, 1T169, 1T194-1T195) and Mellk's own retreating in an August 14, 2008, internal letter to NJEA

Assistant Director Gonzalez-Gannon wherein he stated that ". . . our review of the video did not evidence all of the allegations of wrongful conduct" (CP-12). The Board did not reply to Mellk's letter (12T196; 15T211).

28. Serafin's employment contract was not renewed for the 2008-2009 school year. As of July 1, 2008, Serafin was no longer an employee of the school district (2T95; 4T236; 11T126; 14T149).

29. On July 9, 2008, Serafin met again with attorney Mellk. Mellk reviewed the details of Serafin's case and advised him that he did not have a meritorious legal claim against the Board for not renewing his employment contract (15T42-15T45).

At the hearing, Serafin introduced into evidence a letter from Mellk to NJEA Assistant Director Gonzalez-Gannon dated August 14, 2008 which corroborates Serafin's recollection and testimony, and provides in pertinent parts:

. . . my legal research led me to the conclusion, which I shared face-to-face with Mr. Serafin, that he, as a non-tenured contract employee had no property interest in continued employment with the District, i.e., he was terminable at will for any reason, or no reason, so long as he was not the victim of invidious discrimination as defined by New Jersey and Federal law.

* * *

At our July 9th in-office conference, we reviewed his situation and I again emphasized to him that there were no meritorious legal claims to be made on his behalf . . . Mr. Serafin told me that he understood. [CP-12]

Serafin thought Mellk was a "great attorney," was "very impressed with him" and "very satisfied with his legal advice" (15T37-15T38).

30. Serafin did not request the assistance of BRTA leadership or HJK in filing a grievance challenging his suspension with pay (May 23rd) or his non-renewal (July 1st) until after July 2008 (14T211-14T213; 17T82, 17T185). He attempted to initiate a grievance on his own in July 2008 by writing a letter to the Superintendent of Schools. The Superintendent is not involved in any of the steps in the grievance procedure and Serafin's letter went unanswered (2T104; 15T211).

31. When Serafin did not receive a reply from the Superintendent to either his July letter or Mr. Mellk's correspondence, he reached out to HJK for assistance. It was the summer and perhaps HJK was vacationing during some of the time, but in any event, HJK was not as responsive as Serafin would have liked (12T196). Consequently, Serafin contacted HJK's boss, Mr. Geiger, for assistance. He met with Geiger on August 23, 2008 (12T197-12T198). As a result, HJK prepared a grievance which was filed at level one of the grievance procedure on September 8, 2008 (CP-60; 2T18-2T19, 2T20-2T21, 2T52-2T54, 2T100). The grievance asserted that the Board did not follow the correct procedures when disciplining Serafin and did not have just cause

to suspend him or not renew his employment contract for the following school year (2T101). Serafin was apprised by HJK that the grievance was filed with Peatick on September 8th. On September 9th, he thanked HJK for keeping him advised (CP-61).

32. Though the grievance was filed at level one with Peatick, the Board chose to have its Business Administrator, Starrs, respond in writing. The Business Administrator is the decision maker at level two of the parties' grievance procedure (RA-12; J-1). Starrs denied the grievance on procedural (untimely filed) and substantive (not disciplinary termination but rather not renewed) grounds in a September 17th letter to President Weinreich in which HJK was copied (RA-12; 2T102-2T103; 13T147-13T149).

33. HJK provided Serafin with Starrs' denial of the grievance (RA-12). HJK spoke with Starrs who indicated that he would give the same response if the grievance were moved to level two. In light of this, HJK decided to skip level two and advance the grievance to level three before the Board (2T25-2T26, 2T106, 2T156; 17T87-17T88).

HJK testified that he had consulted with Serafin before skipping level two of the grievance procedure. HJK testified that Serafin's goal was to get the grievance before the Board so he could advocate directly to the Board his position. According to HJK, Serafin agreed with his strategy (2T25-2T26, 2T43-2T44,

2T45, 2T107, 2T157). Serafin, on the other hand, testified that he was never consulted about skipping level two of the grievance procedure and that he was merely informed that the grievance had been advanced to level three after the fact. Serafin believed that meeting with Starrs at level two was an important opportunity to persuade him to change his mind and receive a favorable decision. Serafin provided a printed contemporaneous email at hearing which substantiated his version (CP-18; 13T151, 13T158-13T159; 14T63, 14T65-14T66). Therefore, I find that Serafin was not consulted nor did he agree to forgo meeting with Starrs at level two of the grievance process.

34. On September 29, 2008, Serafin's grievance was moved to level three, the Board level. He requested, and was granted, the opportunity to appear and present his case to the Board. The NJEA, at its own cost and expense, provided Serafin with a consultant, Denise Graff, to assist him in his presentation to the Board. Serafin met with Graff in preparation of the presentation to the Board (RA-14; RA-19; 2T108-2T109, 2T131; 14T216-14T217, 14T219).

On October 14, 2008, with the assistance of Graff, Serafin presented his case to the Board in the closed session part of the Board meeting. By letter dated October 29, 2008, the Board advised the Association that it denied the grievance on procedural and substantive grounds (RA-14; 2T109, 2T114-2T115;

14T219-14T221). Despite being unsuccessful, Serafin thought that Graff's assistance was "beneficial" and her presentation to the Board "brilliant" (2T131; 14T217-14T218).

35. As a result of Serafin being suspended with pay and subsequently not renewed as a Board employee, Carl Mayer was selected by BRTA to replace Serafin as vice president of the Association. He assumed office in June 2008 (2T133, 2T184).

36. On October 30, 2008, HJK and Serafin had a discussion about taking Serafin's grievance to arbitration. Serafin wanted the Association to take his grievance to arbitration. HJK explained to Serafin that the Association must approve taking the grievance to arbitration before he could file the paperwork (J-1; 2T117; 14T70). HJK told Serafin that he would contact Weinreich or Schmidt so that they could arrange for a meeting to consider whether to take his grievance to arbitration (2T116; 11T123-11T127; 17T97-17T98).

37. Though Serafin did not know when the Association would meet to consider taking his grievance to arbitration, he knew it would be soon in order to keep within the contractual deadline for filing for arbitration. He contacted Mayer (Vice President), Schmidt (Grievance Chair) and Alexandra Parameritis (Membership Chair) to tell them that he wanted to be at the union meeting in order to present his side of the story and convince the

Association to take his grievance to arbitration (3T107, 3T111; 4T98; 14T71).

38. In order to preserve Serafin's right to go to arbitration and adhere to the time lines prescribed in the parties' contract, HJK filed for arbitration and notified the Board before the Association had considered it or authorized him to do so. HJK knew he could withdraw his application for arbitration in the event the Association decided not to proceed (J-1; 2T116; 17T98, 17T119-17T120, 17T141-17T142).

39. HJK advised Weinreich and/or Schmidt on or about Thursday, October 30, 2008, that the Association urgently needed to have a meeting to decide whether to take Serafin's grievance to arbitration (11T126-11T127; 17T98, 17T195-17T196). With short notice, and the intervening weekend, Weinreich called for an "emergency" meeting of the Association for Monday, November 3, 2008, after the bus drivers' early morning run at approximately 9:30 a.m. (CP-21; 2T196-2T197; 4T71; 5T104-5T105; 17T97, 17T195-17T196). For example, Mayer, past-President Yadlosky and Schmidt were notified by Weinreich after they had completed their morning bus runs minutes before the November 3rd meeting, while Parameritis testified that she thought there was a notice of the meeting posted that day on the union bulletin Board (3T27, 3T116; 4T72, 4T239-4T240; 8T173-8T174; 17T99-17T100).

Despite the short notice, 17 of the approximate 22 Association members attended the November 3rd meeting (CP-21; 3T117; 5T172-5T174; 8T152-8T156; 9T160; 11T20). Serafin, however, was not notified of, nor did he attend, the meeting (2T273-2T274; 3T39; 4T35, 4T97, 4T236-4T237; 11T157; 14T72-14T73). Neither the parties' contract nor the Association's Constitution and Bylaws require that an aggrieved member be present when the Association considers whether to take a grievance to arbitration (CP-22; J-1; 14T222-14T223).

40. The November 3rd union meeting took place on a school bus. Though President Weinreich was present, she had Vice President Mayer run the general membership meeting in order to avoid any conflict of interest because one of the basis of Serafin's suspension and non-renewal was the altercation she was involved in with Serafin (CP-21; 2T196-2T198; 3T53, 3T72, 3T102, 4T82; 5T151-5T152; 6T132; 8T162, 8T183; 9T84, 9T178; 10T175, 11T126-11T127; 17T106, 17T157, 17T175).

41. The first order of business considered by the Association membership was to bring the Representative Council, also known as the Executive Committee, into conformity with the Association's Constitution. BRTA was a young organization run by inexperienced local members who unknowingly did not run the Association to the letter of its Constitution and Bylaws. As BRTA matured and evolved, and as its leadership became aware of

divergences, they took corrective action to conform their practices to the Constitution and Bylaws (CP-21; 2T207, 2T222; 3T141; 4T156-4T157, 4T161; 6T43, 6T54; 9T64; 11T13; 17T118).

Before November 3, 2008, the Association's Executive Committee consisted of the Association's President, Vice President, Secretary and Treasurer. Article VI of the Association's Constitution provides:

Section 2: The Representative Council shall consist of the Executive Officers and one elected Association Representative for every ten members, or major fraction thereof.
[CP-22]

The Executive Officers are the President, Vice-President, Secretary and Treasurer (Article V, Section 1 of CP-22; 2T222; 9T18-9T19; 11T63-11T64). The Association had grown to 20 to 22 members and therefore two (2) more members needed to be elected to the Representative Council. The membership elected Grievance Chair Schmidt and Past-President Yadlosky to the Executive Committee at the November 3rd meeting (CP-21; 2T226; 4T228; 5T172-5T175; 11T19, 11T107).

42. Mayer next explained to the membership that the Executive Committee was going to meet privately to discuss a personnel matter. It was a small work force and though he was not named, the members knew it was regarding Serafin. It was the custom and practice of BRTA to have its Executive Committee first discuss issues or grievances involving personnel matters in order

to respect the privacy of the aggrieved employee (CP-21; 3T134-3T139, 3T156; 4T75, 4T84; 11T25). The Serafin grievance involved the serious issue of a unit member losing his job. The Executive Committee had decided that no matter what it concluded in its closed session it would permit the entire membership to vote on whether to take Serafin's grievance to arbitration (9T192; 10T160-10T167; 11T128, 11T134-11T135; 17T102-17T103, 17T200). The Council instructed the membership to wait while it discussed the Serafin case. The Representative Council, now comprised of President Weinreich, Vice President Mayer, Secretary Deon, Treasurer Lewis, Past-President Yadlosky and Grievance Chair Schmidt, departed to a different bus to discuss the Serafin grievance (CP-21; 2T226-2T227; 4T84, 4T86-4T87, 4T232; 8T184; 10T169; 11T19-11T20; 17T100-17T101).

43. Weinreich began the sequestered Representative Council meeting by bringing the other members up to date about the Serafin matter. She explained that Serafin's employment contract had not been renewed because he refused to submit an accident form and was observed on video committing motor vehicle violations such as speaking on a cell phone. She further explained that he had filed a grievance with the assistance of an NJEA UniServ Representative which had been denied at the first three steps of the grievance procedure and he now wanted the Association to take his grievance to arbitration. Grievance

Chair Schmidt joined in the presentation explaining that Serafin did not contact him until October 30, 2008, because Serafin had chosen to seek the assistance of the UniServ Representative instead of the local Association leadership (CP-21; 2T262, 2T264; 3T145-3T146, 3T151-3T152, 3T171-3T172; 4T90, 4T230; 5T149; 11T22; 17T106-17T107, 17T185, 17T217-17T218).

No documents, such as attorney Mellk's letter to the Superintendent (CP-11) or the video taken from Serafin's bus (CP-5), were provided to the Executive Committee members for their consideration (2T261; 4T223-4T224; 5T191; 11T47, 11T91-11T92; 17T179, 17T215-17T216).

At the hearing, Yadlosky, Deon, Weinreich and Schmidt testified that after the Weinreich/Schmidt presentation, Weinreich turned the Executive Committee meeting over to Mayer to run (4T232; 6T168-6T169; 11T23; 17T106-17T107). Yadlosky, Deon and Schmidt testified further that after the presentation Weinreich excused herself and left the bus in order to let the others discuss the matter and vote on whether to take Serafin's grievance to arbitration (4T231-4T232; 5T145; 6T123, 6T128-6T130, 6T168-6T169; 17T106-17T107, 17T160). Weinreich admitted and Mayer testified that she remained after the presentation and stayed for the entire Representative Council meeting (2T255; 3T144; 4T164; 11T23-11T24), but only Mayer testified that he did not run the remainder of the meeting and that Weinreich had run

the entire Representative Council meeting (2T255, 2T262; 3T144, 3T153; 4T83, 4T93, 4T97).

After considering the evidence, I find that Mayer ran the Representative Council meeting after the Weinreich/Schmidt presentation and that Weinreich remained for the entire meeting. I do not find Mayer to be a credible witness. I could only rely on his testimony when it was corroborated by independent evidence. He was terminated by the Board on or about October 26 or 27, 2010, and had his own unfair practice charges filed with the Commission at the time of the hearing (RB-1; RB-3; 2T182; 3T241; 4T68; 5T41-5T42, 5T44, 5T67-5T68). When testifying he was evasive and uncooperative at times. I granted a motion to strike Mayer's entire redirect examination because he failed and refused to return to the hearing for recross examination (Granted motion to strike by letter to parties dated May 30, 2013. See, also letter to parties dated December 14, 2012).

Weinreich, on the other hand, was a credible witness. Her testimony that she stayed for the entire Representative Council meeting was an admission against self interest and that of BRTA. Though Yadlosky, Deon and Schmidt testified that Weinreich had left after the presentation, I find that she remained, in part, because Weinreich's version most favorably supports Serafin's theory that she somehow influenced the decision not to take his grievance to arbitration.

After members of the Executive Committee discussed taking Serafin's grievance to arbitration, Mayer called for a vote. The vote was done by a show of hands. All who testified at hearing agree that the result was five members voted not to take the grievance to arbitration, no member of the Committee voted in favor of taking it to arbitration, and one member abstained from voting. The minutes of the meeting confirm this result (CP-21; 2T264-2T267; 3T153, 3T163; 4T87, 4T90, 4T92; 5T147, 5T150; 11T88; 17T108-17T109, 17T157).

Yadlosky, Deon, Weinreich and Schmidt testified that Weinreich was the one who abstained from voting (4T230; 5T147, 5T148, 5T154-5T156; 11T11-11T12, 11T24, 11T88; 17T109, 17T159-17T160). Mayer testified that he was the one who abstained from voting (2T267; 3T153, 3T164; 4T96). The meeting minutes shed no light on this disagreement (CP-21). I do not credit Mayer's testimony in this regard and find that Weinreich abstained from voting on whether to take Serafin's grievance to arbitration, and that Mayer had voted against taking the grievance to arbitration.

44. After the Representative Council voted at its sequestered meeting, the members returned to the bus where the general membership meeting was being held (3T155; 6T151, 6T132; 8T178-8T179, 8T184; 9T171; 11T12, 11T24-11T25, 11T150; 17T110). Only Yadlosky testified that Weinreich did not return to the general membership meeting (4T233). I do not credit her

testimony on this issue and find that Weinreich did return to the general membership meeting.

Mayer ran this part of the general membership meeting. While Weinreich was there, she did not participate in this part of the meeting (3T156; 4T82; 5T151; 6T132; 8T162; 9T101, 9T171, 9T178; 11T24-11T25, 11T150; 17T175). Mayer explained to the members that Serafin was not renewed for the 2008-2009 school year because he refused to submit an accident report. Mayer further informed the membership that the Board had a video of Serafin committing violations of Board policy and motor vehicle regulations. He advised the members that the Representative Council had voted not to take Serafin's grievance to arbitration (CP-21; 3T156, 3T158; 5T151-5T152; 6T132; 9T97, 9T101-9T104; 17T110).

Schmidt testified at this point Weinreich excused herself and left the bus before the membership discussed the matter and voted (17T110, 17T175). Mayer, Parameritis and Weinreich testified that Weinreich was at the general membership meeting for its entire duration (2T204, 3T155; 8T178-8T180, 8T182, 8T184; 9T171; 11T24-11T25, 11T150). Again, Weinreich's testimony is an admission against self interest and the interest of BRTA, and most helpful to Serafin's case. I find that Weinreich stayed during the entire membership meeting, but did not participate. She just sat and listened while Mayer ran the meeting.

Mayer next invited discussion on whether to take Serafin's grievance to arbitration. After a brief discussion, Mayer called for a membership vote. Those members who were not on the Representative Council had the opportunity to vote by a show of hands. The general membership voted not to take Serafin's grievance to arbitration^{5/} (CP-21; 2T206; 3T158-3T159, 3T183; 4T229; 6T119; 8T159, 8T162; 9T160-9T161, 9T174, 9T193; 11T26-11T27, 11T134-11T135; 17T103, 17T111-17T115, 17T157).

45. By a vote of 13 to 0 with 4 abstentions (or Parameritis' version 11 to 2 with 4 abstentions), the members of BRTA voted not to take Serafin's grievance to arbitration. The Association did not think that the grievance had merit or that it could win in arbitration (RA-16; 2T123, 2T136). To give insight into the members' view of Serafin's claim, Yadlosky and Parameritis testified that submitting accident reports for minor accidents is standard procedure and a requirement of a bus driver's job. They each had had minor accidents during their careers, were required to submit accident reports, which did not have adverse impacts on retaining their jobs. To refuse to

5/ Most of the evidence, including the meeting minutes (CP-21), demonstrate that no one voted in favor of taking the grievance to arbitration. Parameritis testified, however, that she and another member voted in favor of taking the grievance to arbitration (8T152-8T157; 9T106, 9T158, 9T162; 17T114). Parameritis conceded at hearing that a majority of the members voted not to take the grievance to arbitration so I do not need to resolve this factual difference (9T174, 9T193).

submit an accident report would be insubordinate and get one in "big trouble" as Parameritis put it (4T171-4T172, 4T195-4T196, 4T224, 4T229; 9T148, 9T169). Yadlosky also testified that she voted in favor of not taking Serafin's grievance to arbitration solely on the basis of his insubordination. The infractions contained on the video did not factor into her decision (4T224). I credit their testimony.

46. After the November 3rd general membership meeting, Weinreich and Schmidt, independently apprised HJK of the outcome of the membership vote (2T118; 11T45-11T46; 17T130, 17T134, 17T137). HJK advised that BRTA needed to inform Serafin in writing that it was not going to take his grievance to arbitration. BRTA needed to notify the Board as well (11T172-11T174; 17T135-17T137). HJK further advised that he would withdraw his request for a panel of arbitrators (17T142).

47. On November 13, 2008, the Executive Committee met to discuss drafting letters to Serafin and the Board advising them that BRTA was not going to take Serafin's grievance to arbitration. By letter dated November 13th, the Board was so advised (CP-21; RA-21; 11T140, 11T171-11T174; 17T121-17T122, 17T117, 17T121-17T122, 17T132-17T133).

The letter to Serafin was not sent until December 4, 2008. That letter, which is on official BRTA letterhead and signed by all Representative Council members states in its entirety:

We regret to inform you of our decision not to move forward with your arbitration. BRTA voted and agreed there was no merit to your case. [RA-16]

Superintendent Shilder, Business Administrator Starrs and UniServ Representative HJK were copied on the correspondence (2T126; 3T188-3T189; 6T145; 11T138, 11T140; 17T123-17T124).

Serafin did not receive the letter until December 8, 2008 (14T82, 14T233, 14T239). No one on the Representative Council had an explanation for why it took over 30 days to send Serafin the letter (3T188; 6T145; 17T126-17T127).

HJK also contacted Serafin by telephone and email on December 9th advising that BRTA had voted to not take his grievance to arbitration and that he would be withdrawing the request for arbitration (CP-66; 2T121; 14T119-14T121, 14T240). Subsequently, Serafin telephoned HJK asking whether Serafin could pay for the arbitration and whether the NJEA could be of assistance. HJK explained to Serafin that they could not supersede the contract and that BRTA had the right not to go forward with the arbitration (2T127).

Undeterred, Serafin continued to request that the NJEA take his grievance to arbitration. He contacted HJK's supervisors. HJK held out withdrawing his request for arbitration as long as he could while Serafin pursued his request up the NJEA chain of command, but on January 12, 2009, HJK withdrew his request for arbitration. HJK's supervisors denied Serafin's requests

essentially for the same reasons HJK had given (2T122; 14T117, 14T123, 14T237-14T238, 14T240-14T241).

ANALYSIS

A majority representative violates N.J.S.A. 34:13A-5.4b(1) when its actions tend to interfere with, restrain or coerce employees in the exercise of rights guaranteed them by the Act, provided the actions lack a legitimate and substantial organizational justification. FOP Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990); FMBA Local 35 (Carragino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983).

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, capricious or in bad faith. [Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967)].

The Commission and 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., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

A union is allowed a "wide range of reasonableness in servicing its members." Essex-Union Joint Meeting and Automatic Sales, Servicemen and Allied Workers, Local 575, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991). An employee organization must evaluate an employee's request for arbitration on the merits and decide, in good faith, whether it believes the employee's claim has merit. See Ford Motor Company v. Huffman, 345 U.S. 350, 337-338, 72 S.Ct. 681, 97 L.Ed. 1048 (1953); D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74 (1990). A majority representative must exercise reasonable care and diligence in investigating, processing and presenting grievances. But proof of negligence, standing alone, does not establish a breach of the duty of fair representation. Accordingly, the mere failure to submit a grievance to arbitration may not violate the union's duty. OPEIU Loc. 153; TWU No. 225 (Metros), P.E.R.C. No. 85-99, 11 NJPER 231 (¶16089 1985); Fair Lawn Bd. of Ed.

Serafin alleges that the Association breached its duty of fair representation in the processing of his grievance challenging his non-renewal and by deciding not to take his grievance to arbitration. For the reasons that follow, I do not find that BRTA breached its duty of fair representation to Serafin and recommend that the Complaint issued against the Association be dismissed by the Commission.

Before examining what Serafin believes BRTA did or did not do to violate the Act, it is worthwhile summarizing the assistance the Association did provide to him. From the outset, Serafin was assigned an NJEA uniserv representative, Henry John Klein, to handle his workplace issues emanating from the April 22nd accident. Having HJK manage the process accomplished two goals -- eliminating Local President Weinreich's involvement, with whom Serafin had a poor relationship that developed into a potential conflict of interest after the April 29th altercation, and providing him with a representative who had more experience than the local union leadership.

HJK spoke by telephone and met with Serafin's supervisor, Peatick, in an attempt to save his job. When it became apparent that Serafin was not going to submit an accident form as directed by his supervisor, and after Serafin had thrown the form in the garbage in front of Peatick, telling her she would have to fire him, Serafin was not terminated but instead non-renewed for the following academic year. This not only preserved Serafin's singular interest at the time of retaining medical benefits but also allowed him to continue to be paid until the end of his contract in June.

When Serafin had difficulty in gaining access to view the video, the NJEA provided him with an attorney at its own cost and expense. That attorney, Mellk, obtained a copy of the video for

Serafin and provided him with legal advice. Serafin was very pleased with Mellk's services.

After Serafin was unsuccessful in filing a grievance on his own in July 2008, the Association prepared and filed one on his behalf in September 2008. When the grievance was processed to Level Three (before the Board) of the procedure, the NJEA provided Serafin with a consultant, Graff, to help him prepare and present his position to the Board. Graff's assistance was provided at no cost to Serafin. Again, Serafin was satisfied with Graff's services.

When BRTA considered whether to take Serafin's grievance to arbitration, it did not merely have the Representative Council decide, but took the extra step of having the entire membership vote on it. Throughout the process, HJK, the NJEA and the local Association were in continuous contact with Serafin. They were reasonably responsive and took the time to explain things each step of the way.

Serafin's first argument is that the Representative Council was illegally constituted and therefore any decision it made with regard to not taking his grievance to arbitration is tainted and violative of the Act. I disagree. Firstly, everyone who was on the Representative Council at the time it made its decision, except for Mayer, Yadlosky and Schmidt, were elected by the membership in April 2008, before Serafin's accident. Secondly,

Mayer replaced Serafin as Vice President in June 2008. At that time, Serafin had not challenged his non-renewal. The only grievance he had filed at that point demanded that Weinreich also not be renewed. It did not seek as a remedy that Serafin be reinstated. The Association believed that Serafin was not returning as an employee and filled his position. Mistakenly or otherwise, Mayer's assuming the vice presidency was neither arbitrary nor done in bad faith. Thirdly, Yadlosky and Schmidt were elected to the Representative Council in an effort to more closely adhere to the requirements of the Association's Constitution and Bylaws -- again, neither arbitrary nor done in bad faith. Finally, relying on Calabrese v. PBA Local 76, 157 N.J. Super. 139 (Law. Div. 1978), the Commission has generally been reluctant to intercede in intra-union disputes [See City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982)] and has found that a union's alleged failure to follow its own by-laws is a strictly "internal matter which does not fall under the guise of the Act. . . ." ATU Local 824, D.U.P. No. 85-9, 10 NJPER 600, 601 (¶15279 1984). This part of Serafin's argument involves an internal union matter which is outside the guise of the Act.

Next, Serafin claims that the Association "blundered" by filing the grievance challenging his suspension with pay and non-renewal late or outside the contractually set time lines. His

grievance was denied, in part, because it was untimely filed. But, Serafin never requested that HJK or the Association file a grievance on his behalf until after July 2008. Instead, he attempted to file one on his own in July. The contract requires that a grievance be filed within 10 work days of when the employee knew or should have known of the occurrence. Even using July 1 as the operative date (day after Serafin's 2007-2008 employment contract expired), Serafin needed to have requested that BRTA file a grievance sometime in July 2008 to be timely.

In Middlesex Cty. (Mackaronis), P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982, certif. denied 91 N.J. 242 (1982), an aggrieved unit member charged his union with breaching its duty of fair representation when it did not file a timely grievance on his behalf. In finding that the union did not breach its duty, the Commission held that "there is absolutely no evidence that the . . . [union] acted in bad faith, or that it discriminated against him . . ." and that the charge ". . . reduces itself to his belief that the [union] acted negligently in failing to process his grievance in a timely and proper manner." Id. at 557. Assuming that BRTA was negligent in processing Serafin's grievance, which I do not find, that is not enough to establish that it breached its duty owed to him without the hallmarks of arbitrariness, capriciousness or bad faith.

Serafin asserts that the duty of fair representation was breached when HJK bypassed Level Two of the grievance procedure and went directly to the Board, Level Three. Serafin believes that his grievance was significantly prejudiced because he missed the opportunity to meet with the Level Two decision maker Starrs. Starrs had issued a lengthy written denial of the grievance at Level One. He had told HJK that if the grievance was presented to him again at Level Two, he would render the exact same decision. In light of that, HJK thought that the most efficient and expeditious course was to skip Level Two and proceed to Level Three. HJK advised Serafin of the strategy and the reasons for it.

Serafin's belief that he would have convinced Starrs to change his decision if they had met at Level Two is speculative and contrary to the evidence on the record. The Association is afforded a "wide range of reasonableness in servicing its members." Essex-Union Joint Meeting and Automatic Sales, Servicemen and Allied Workers, Local 575. While Serafin may disagree with the approach HJK (and by extension BRTA) took in processing his grievance, that approach was reasonable and not arbitrary, capricious or done in bad faith.

Serafin maintains that the Association breached its duty of fair representation when it did not invite him to present his case to the membership before voting on whether to take his

grievance to arbitration. The meeting was called on short notice with many members learning about it only moments before the meeting was held. That included members like Mayer whom Serafin had advised that he'd like to attend the meeting. Granted, no one tried to contact Serafin by cell phone or otherwise that day. However, neither the parties' contract or the Association's Constitution and Bylaws require that an aggrieved unit member be given the opportunity to address the Executive Committee or general membership before voting on whether to take a grievance to arbitration. Moreover, there is nothing in the record to suggest that other aggrieved unit members were invited to address the Association in the past or that Serafin was treated disparately in any way. Absent a showing of bad faith or unjustified disparate treatment, the Commission generally will not intercede in the internal operations of a union. Calabrese v. PBA 76; City of Jersey City; Newark Building Trades Council, D.U.P. No. 82-34, 8 NJPER 333 (¶13151 1982); Camden County College Faculty Ass'n, D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987).

Serafin also maintains that his position was not adequately represented at the November 3rd Association meeting because documents such as attorney Mellk's June 27, 2008, correspondence to Superintendent Schilder and the video removed from his bus were not presented to members before the vote. The facts and

circumstances surrounding Serafin's suspension and non-renewal were orally presented independently to the Representative Council and the general membership. Mellk's June 27th letter to Shilder is favorable, but it does not give the full picture. In order for the members to have had a more complete understanding, Mellk's August 14, 2008, correspondence to NJEA Assistant Gonzalez-Gannon would have also needed to be presented. In that letter, Mellk makes it clear that Serafin does not have a meritorious case. Had the video been shown, the members would have seen Serafin yelling at Weinreich in an increasingly loud, hostile tone and stating that she would look funny trying to hold on to the side of the bus while going down the road. They also would have seen at least one motor vehicle violation.

I fail to see how presenting all of the documents and video would have helped Serafin's cause. Plus, I think that Serafin's focus on the video is misplaced because it completely ignores the fact that he was insubordinate to his supervisor. His insubordination alone -- his refusal to do what other bus drivers had done under similar circumstances -- could have been the sole reason why members voted against taking the grievance to arbitration, as was the case with Yadlosky's vote.

Lastly, Serafin argues that Weinreich influenced or engineered the "no vote" to taking his grievance to arbitration. Serafin believes that he always had a poor relationship with

Weinreich, which worsened after the April 29, 2008 altercation. He argues that she had a conflict of interest with regard to processing his grievance and that her presence at and participation in the November 3rd Association meeting tainted the outcome of the vote.

In TWU No. 225 (Metros), P.E.R.C. No. 85-99, 11 NJPER 231 (¶16089 1985), an aggrieved unit member accused his union of breaching its duty of fair representation when it declined to take his grievance to arbitration. There, the aggrieved employee's supervisor, who also held a leadership position in the union, provided information to their employer which led to the disciplining of the aggrieved employee. In finding that the union did not breach its duty of fair representation to the unit member, the Commission found that the information passed on to the employer was done by the head custodian in his capacity as a supervisor and that he was not involved whatsoever in the processing of the grievance. At each step of the grievance procedure, the aggrieved member was represented by someone other than the head custodian. The head custodian also did not play a role in the decision not to take the grievance to arbitration.

In Camden Cty. College (LaMarra), P.E.R.C. No. 93-90, 19 NJPER 222, 223 (¶24107 1993), the Commission found that a union breached its duty of fair representation when its president, who was also the supervisor who initiated discipline against a unit

member, “. . . did not extricate himself from the Association’s handling of [the] . . . grievance.” The union president was a member of the Executive Board which decided not to take the grievance to arbitration. The general membership was not given the opportunity to vote in that case.

Unlike the two Commission cases cited above, Weinreich was not Serafin’s supervisor and did not have the ability to initiate discipline against him. She did report the April 29th altercation to their supervisor but that is not the same as initiating discipline. Discipline (verbal and written warnings) had already been initiated by Peatick for Serafin’s refusal to submit an accident form before the April 29th encounter.

From the start, Weinreich had very little to do with the managing of Serafin’s work place issues, including the filing or processing of his grievances. Because of the altercation (possible conflict of interest) and her inexperience, she had HJK handle Serafin’s work-related problems. She neither met with Peatick on Serafin’s behalf nor participated in the processing of his grievance through Level Three (Board step).

When the Association met on November 3, 2008, to consider whether to take Serafin’s grievance to arbitration, President Weinreich had Vice President Mayer run the entire general membership meeting in order to avoid any conflict of interest. Other than advising the membership that Mayer was going to run

the meeting, she did not participate in the general membership portion of the meeting.

At the sequestered Representative Council meeting held the same day, Weinreich, along with Grievance Chair Schmidt, did explain to the other members the circumstances surrounding Serafin's grievance. Mayer, however, then took over running the Representative Council meeting and called for the vote. All members of the Council voted against taking the grievance to arbitration except for Weinreich who abstained from voting.

When the general membership portion of the meeting resumed, Weinreich sat quietly while Mayer explained the situation to the members and called for the vote. The members independently voted not to take Serafin's grievance to arbitration. Even assuming that Weinreich's presentation to the sequestered Executive Committee rose to the level of undue influence, the general membership's vote was cleansing.

I find that Weinreich's minimal participation in the November 3rd meeting and her presence there is more akin to the union leader's participation in TWU No. 225 (Metros) than that of the union president in Camden Cty. College (LaMarra). Consequently, I conclude that Weinreich's presence and small role in the November 3rd meeting are not grounds for finding that BRTA breached its duty of fair representation owed to Serafin.

The evidence does not demonstrate that BRTA's conduct toward Serafin was arbitrary, capricious or in bad faith. In considering all of the assistance that the Association (and NJEA) did provide to Serafin, along with things in retrospect it could have done better (not have Weinreich attend the November 3rd meeting at all and notify Serafin sooner of the outcome of the vote, to name two), I do not find that BRTA breached its duty of fair representation.

RECOMMENDATIONS

The Bridgewater-Raritan Transportation Association did not violate N.J.S.A. 34:13A-5.4b(1) when it declined to pursue Serafin's grievance through arbitration. I recommend that the Complaint issued against it be dismissed.

/s/Perry O. Lehrer
Perry O. Lehrer
Hearing Examiner

DATED: June 5, 2015
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by June 15, 2015.