

D.U.P. NO. 2020-12

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

In the Matter of

NJ STATE MOTOR VEHICLE EMPLOYEES
UNION, SEIU LOCAL 518,

Respondent,

-and-

Docket No. CI-2016-030

DABREE NICHOLSON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Dabree Nicholson against Service Employees International Union, Local 518 (SEIU). Nicholson alleged SEIU breached its duty of fair representation in its handling and settlement of the disciplinary proceedings against him initiated by his former employer, the State of New Jersey, Motor Vehicle Commission (MVC), concerning the suspension of his driver's license. The Director found that the charge's alleged facts showed that SEIU evaluated the chances for lesser discipline, negotiated and expressed concern for Nicholson, and provided guidance to him; and that the charge did not allege facts showing that SEIU caused Nicholson to be under undue duress or coercion or otherwise showing bad faith representation despite Nicholson's desired result not being achieved.

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Appearances:

For the Respondent,
Kroll Heineman Carton, attorneys
(Raymond G. Heineman, of counsel)

For the Charging Party,
Dabree Nicholson, Pro se

REFUSAL TO ISSUE COMPLAINT

On December 21, 2015 and January 14, 2016, Dabree Nicholson filed an unfair practice charge and amended charge against Service Employees International Union, Local 518 (SEIU). The charge, as amended, alleges a violation of N.J.S.A. 34:13A-5.4b(1), (2), (3), (4), and (5) of the New Jersey Employer-Employee Relations Act (Act).^{1/} The gravamen of

^{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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or
(continued...)

Nicholson's charge is that SEIU breached its duty of fair representation in its handling and settlement of disciplinary proceedings against him initiated by his former employer, the State of New Jersey, Motor Vehicle Commission (MVC), concerning the suspension of his driver's license. These proceedings eventually led to Nicholson signing a settlement agreement to resign in good standing on November 20, 2015. Nicholson alleges that he was under heavy duress and was coerced into signing the settlement agreement and that he thought that SEIU could have negotiated for a lesser discipline.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute unfair practices on the part of the respondent.

N.J.S.A. 34:13A-5.4(c); 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. I find the following facts.

Nicholson was employed by MVC for approximately fourteen (14) years, the last four (4) of which as a safety specialist 2,

1/ (...continued)
the adjustment of grievances. (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. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

a unit title represented by SEIU. The Civil Service Commission job description for this title requires appointees to "possess a driver's license valid in New Jersey." Furthermore, MVC rules require employees to notify MVC if their license becomes suspended. On or about June 25, 2014, Nicholson's license was suspended as a result of driving while intoxicated. Nicholson did not inform MVC. Instead, MVC discovered the suspension in the course of a routine review of employees' licenses on or about June 23, 2015.

According to Nicholson, he had not been in trouble the previous 14 years. MVC initially sought to suspend Nicholson's employment for 6 months, in its communications with SEIU representatives. However, after learning that on May 7, 2015, Nicholson filled out an International Certified Commercial Examiner Application in which he falsely certified that he currently held a valid driver's license, MVC issued an amended Preliminary Notice of Disciplinary Action on October 19, 2015, seeking Nicholson's termination. In lieu of disciplinary proceedings, MVC advised SEIU of its offer to allow Nicholson to resign in good standing, effective January 1, 2016. SEIU relayed this offer to Nicholson. Before Nicholson accepted the offer, MVC discovered on November 12, 2015, that Nicholson's license was suspended a second time and that he had again failed to inform MVC as required. MVC rescinded its offer to allow a Nicholson to

resign in good standing effective January 1, 2016. Instead, MVC offered to allow Nicholson to resign in good standing, effective immediately.

Nicholson's charge admits that his SEIU representative negotiated with MVC and provided guidance to Nicholson. His SEIU representative advised him on several occasions to resign in good standing because the representative did not want to see Nicholson terminated without good standing and possibly lose his entire pension.

On November 20, 2015, Nicholson signed a settlement agreement resigning from his position with MVC. Attached to the settlement agreement was a signed certification from Nicholson stating in relevant part, ". . . I have reviewed this Settlement Agreement and fully understand its meaning and terms. I acknowledge that my representative questioned my understanding and my acceptance of the terms of this Agreement. I am satisfied with my representation and I enter into this Agreement voluntarily."

By letter dated November 25, 2015, Nicholson sought to revoke his resignation and MVC denied that request by letter dated December 2, 2015.

ANALYSIS

Section 5.3 of the Act empowers a union to negotiate on behalf of all unit employees and to represent all unit employees

in administering the collective negotiations agreement. With that power comes the duty to represent all unit employees fairly in negotiations and contract administration. Section 5.3 specifically links the power to negotiate and administer with the duty to represent all unit employees "without discrimination and without regard to employee organization membership." The standards in the private sector for measuring a union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed. 2d 842 (1967). Under Vaca, a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the negotiations unit is arbitrary, discriminatory or in bad faith. Id. at 191. Those standards have been adopted in the New Jersey 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) and Carteret Ed. Assoc. (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390, 391 (¶28177 1997).

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). The Commission has repeatedly held that an employee organization is not obligated to pursue every grievance. Rather, it must evaluate possible grievances and decide in good faith whether a unit

employee's claim has merit. D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74 (1990); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Trenton Bd. of Ed. (Salter), P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986). The mere allegation that a union did not act in accordance with a unit member's expectations or achieve the results the member desired does not demonstrate conduct that is arbitrary, discriminatory, or in bad faith. Bergen Community College, D.U.P. No. 2018-3, 44 NJPER 157 (¶46 2017).

Nicholson has not alleged any facts showing that SEIU acted in violation of Vaca standards. Nicholson's charge acknowledges that his SEIU representative negotiated with MVC throughout the process and that the representative provided guidance to him. This guidance included telling Nicholson on several occasions to resign because the SEIU representative did not want to see Nicholson terminated without good standing and possibly lose his pension. Nicholson's admission of his SEIU representative's expressed concern shows that his majority representative weighed the chance of MVC agreeing to reduced discipline against the chance that MVC would terminate Nicholson's employment without "good standing" and possibly cause Nicholson to face additional negative consequences as a result. Although Nicholson was not comfortable with this guidance, it does not show that he was under undue duress or coercion caused by SEIU. The settlement

agreement he signed provided that he was satisfied with his representation and that he entered into the agreement voluntarily. Any duress or coercion was not caused by SEIU, but by MVC's ability to seek a less favorable consequence for Nicholson's repeated failure to notify MVC of his license suspensions.

Nicholson admits to wrongdoing in his charge, but states that he thought there was room to negotiate the level of discipline because he had not been in trouble the previous 14 years. Through negotiations with SEIU, MVC initially offered a 6-month employment suspension when the only known wrongdoing was a failure to inform MVC of his June 25, 2014, license suspension. However, MVC rescinded its initial offer after it discovered Nicholson had falsely certified on his International Certified Commercial Examiner Application that he held a valid driver license despite it having been suspended at the time of the certification. MVC changed its offer to a resignation in good standing, effective January 1, 2016. After making the offer, MVC discovered that Nicholson's license had been suspended again and that he had again failed to provide notice to MVC. MVC again changed its offer, this time to immediate resignation in good standing. The room for SEIU to negotiate evidently narrowed with each discovery. Given the seriousness of the offenses to which Nicholson admitted and the effect of a suspended license on his

job duties, the SEIU's negotiation of a deal with the MVC that allowed him to resign in good standing suggests no bad faith representation. That this was not Nicholson's desired result does not by itself indicate a violation of the duty of fair representation. Bergen Community College. Accordingly, I dismiss the 5.4b(1) allegation.

Only public employers, not individual employees, have standing to assert a 5.4b(2), (3) or (4) violation. New Jersey State PBA and PBA Local 199, D.U.P. No. 2011-4, 38 NJPER 53 (¶7 2010); State of New Jersey (Juvenile Justice), D.U.P. No. 2012-8, 38 NJPER 248 (¶83 2012). Also, an alleged violation of 5.4b(5) requires a citation to a Commission rule or regulation which was allegedly violated, which Nicholson's charge, as amended, does not contain. See State of New Jersey (Juvenile Justice). Accordingly, I dismiss these allegations, as well.

Based on the foregoing, the Commission's complaint issuance standard has not been met, and I decline to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3(a).

ORDER

The unfair practice charge is dismissed.

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: May 5, 2020
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to
N.J.A.C. 19:14-2.3(b) within 10 days.**

Any appeal is due by May 15, 2020.