

D.U.P. NO. 2024-1

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

In the Matter of

WASHINGTON TOWNSHIP  
EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-2023-021

JESSICA FLAHERTY,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge filed against a majority representative alleging that the majority representative breached its duty of fair representation when it elected not to pursue a grievance to arbitration. The Director noted that majority representatives do not have the duty to process every grievance to arbitration, and declines to issue a Complaint where a majority representative has decided not to pursue a grievance to arbitration and there are no allegations that it engaged in unlawful conduct during the appeal process.

D.U.P. NO. 2024-1

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

In the Matter of

WASHINGTON TOWNSHIP  
EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-2023-021

JESSICA FLAHERTY,

Charging Party.

Appearances:

For the Respondent,  
Zazzali P.C., attorneys  
(Colin M. Lynch, of counsel)

For the Charging Party,  
Murphy Law Group, LLC, attorneys  
(Mary Kramer, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On February 9, 2023, Jessica Flaherty (Flaherty) filed an unfair practice charge against her majority representative, the Washington Township Education Association (WTEA or Association). Flaherty alleges that the Association failed to represent her when it refused to appeal her termination to arbitration. The Association's conduct allegedly violates section 5.4b(1), b(2),

b(3), b(4), and b(5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

The Association denies violating the Act, contending that it is not obligated to take Flaherty's case to arbitration to fulfill its duty of fair representation.

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 will decline to issue a complaint. N.J.A.C. 19:14-2.3. I find the following facts.

Flaherty was employed by the Washington Township Board of Education (Board) as a non-tenured full time special education teacher during the 2021/2022 school year. Flaherty was a member of the Association, who was a party to a collective negotiations agreement with the Board effective July 1, 2019 through June 30,

---

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 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."

2022. Flaherty's employment was terminated by the Board effective March 3, 2022. Flaherty asserts that she was terminated in retaliation for raising concerns about how her class was structured. However, the Board and the Association maintain that Flaherty was terminated for leaving her classroom unattended, displaying unprofessional classroom behavior, and rejecting the Board's attempts to help her improve her performance.

The Association filed two grievances on behalf of Flaherty contesting her termination.<sup>2/</sup> On April 12, 2022, the grievances were presented to the Board, who denied them and upheld Flaherty's termination. On May 2, 2022, the Association's grievance committee initially voted to advance Flaherty's grievance to arbitration and Flaherty was notified of this vote the following day.

The Association concurrently sought and received an opinion from legal counsel as to whether certain contract language prevented them procedurally from advancing the grievance to arbitration. The opinion only addressed whether the grievance was procedurally arbitrable, concluding that it was, and did not address the substantive merits of the case and the likelihood of

---

<sup>2/</sup> The first grievance was filed on February 22, 2023 after the Superintendent informed Flaherty that he would be recommending her termination. The second grievance was filed on March 14, 2023 after the Board voted to follow the Superintendent's recommendation.

prevailing at arbitration. Consequently, the grievance committee reviewed the merits of the case and determined that even if the grievance survived a Petition by the Board for a Scope of Negotiations determination, it lacked a substantial likelihood of prevailing because of Flaherty's conduct and performance while employed. It also determined that in the unlikely event that the grievance was sustained at arbitration, the result would at best be a modest award of two months of lost wages.

On October 3, 2022, after considering the merits of the grievance, the Association's grievance committee took a second vote and ultimately decided not to advance Flaherty's grievance to arbitration. Flaherty was notified of the decision the following day.

Flaherty believes that the Association's decision not to move forward with arbitration was because it initially failed to notify the Board in May that it intended to advance the grievance to arbitration within the prescribed time periods outlined in the collective negotiations agreement.

#### **ANALYSIS**

N.J.A.C. 34:13A-5.3 provides in part:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the Supreme Court articulated the standard for determining whether a labor organization violated its duty of fair representation. The Court held:

. . . [A] breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith. [Id. at 190, 64 LRRM 2376]

Vaca concerned the refusal of a union to process a grievance to binding arbitration. The Court wrote:

. . . Nor do we see substantial danger to the interests of the individual employee if his statutory agent is given the contractual power honestly and in good faith to settle grievances short of arbitration . . . [386 U.S. 192, 64 LRRM 2377]

New Jersey has adopted the Vaca standard in deciding fair representation cases arising under the Act. See 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); Saginario v. Attorney General, 87 N.J. 480 (1981); OPEIU Local 153 (Johnstone), 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). For example, the duty of fair representation does not require a union to process non-meritorious

grievances. Carteret Ed. Ass'n, P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997). 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. 330, 337-338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953); D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74 (1990).

The charge alleges no facts indicating that the WTEA acted arbitrarily, discriminatorily or in bad faith when it decided not to advance Flaherty's grievance to arbitration. The fact that the grievance committee initially voted to approve arbitration is of no consequence. The facts indicate that the Association reviewed the merits of the case prior to making the ultimate decision not to advance the matter to arbitration, which is sufficient to withstand a claim of a breach of the duty of fair representation.

Furthermore, even if I assume that Flaherty is correct in her belief that the Association did not advance her grievance to arbitration because it failed to timely notify the Board pursuant to the contract language, "mere negligence, poor judgment, or ineptitude in grievance handling," alone do not suffice to prove a breach of the duty of fair representation. Glen Ridge School Personnel Ass'n, P.E.R.C. No. 2002-72, 28 NJPER 251 (¶33095 2002).

For all of these reasons, I find that Flaherty has not alleged facts warranting the issuance of a Complaint on the 5.4b(1) allegation.

Flaherty's allegation of a 5.4b(2) violation of the Act, is a right belonging to a public employer, not to individual employees. Thus, Flaherty lacks standing to assert such a claim. Newark Teachers Union and Sykes, H.E. 2002-8, 28 NJPER 73 (¶33024 2001). In addition, a union's duty of good faith negotiations is owed to the employer, not individual unit members. Individual employees do not have standing to raise these issues. Council of New Jersey State College Locals, D.U.P. No. 84-8, 6 NJPER 531 (¶11271 1980). Accordingly, I dismiss the b(3) allegation.

Additionally, because there are no facts alleged which demonstrate that the Association refused to reduce a negotiated agreement to writing or that a Commission rule or regulation has been violated, I also dismiss the b(4) and b(5) allegations.



**ORDER**

The unfair practice charge is dismissed.

/s/ Ryan M. Ottavio  
Ryan M. Ottavio, Director  
Director of Unfair Practices

DATED: August 10, 2023  
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 August 21, 2023.**