

H.E. NO. 96-20

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

In the Matter of

ORANGE EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-H-94-84

MINNIE EDWARDS,

Charging Party.

**SYNOPSIS**

A Hearing Examiner of the Public Employment Relations Commission found that the Orange Education Association did not violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by the manner in which it structured the 1992-1995 salary guides, or by removing Minnie Edwards from its negotiations team.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which 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 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.

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Charging Party.

Appearances:

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys  
(Arnold S. Cohen, of counsel)

For the Charging Party,  
Vickie A. Donaldson, Esq.

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On June 27, 1994, Minnie Edwards (Charging Party) filed an unfair practice charge (C-1A) with the New Jersey Public Employment Relations Commission, amending it on July 13, 1994 (C-1B), alleging that the Orange Education Association (OEA) and its parent organization the New Jersey Education Association (NJEA) (together known as Association), violated subsections 5.4(b)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> In a lengthy charge accompanied by numerous attachments,

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<sup>1/</sup> These subsections 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. (5) Violating any of the rules and regulations established by the commission."

Edwards charged the Association with unfair representation alleging in the original charge that: 1) despite an agreement with the Orange Board of Education (Board) for a 5% salary increase for each year of the 1992-1995 collective agreement, NJEA Representative Mary Lou Mitchell, and OEA President, Patricia Bauernhuber constructed a salary guide that left the Charging Party, and four other secretaries, without a raise for the 1992-93 school year; 2) Bauernhuber and Mitchell would not let OEA negotiating team members, including the Charging Party, have input into structuring the salary guides; 3) on or about March 21, 1994 Bauernhuber was angry and hostile to Charging Party and others regarding the structuring of the salary guides, and NJEA Representative Al Fox told them they could be held in contempt if they did not encourage the members to ratify the contract; 4) on or about March 23, 1994 Bauernhuber devised a scheme to make certain the secretaries contract was ratified; 5) NJEA Representative, Dennis Testa, would not help the Charging Party and told her if she interfered she could go to jail; 6) Bauernhuber called Charging Party a fool and said she was causing trouble; 7) Bauernhuber told the Board Superintendent that the Charging Party was making telephone calls to the NJEA on Board time; 8) the April 20, 1994 union election for officers was done underhandedly by Bauernhuber; 9) after Bauernhuber was reelected OEA president she removed the Charging Party from the OEA negotiations team; 10) the secretarial agreement was signed by a para-professional, not by a secretary; 11) Bauernhuber refused to

revise the union constitution; 12) the NJEA has not provided PERC rulings to unit members when asked; 13) the NJEA and OEA are taking dues money but not representing unit members.

In the amendment Edwards charged Bauernhuber with unfair representation alleging that she: 1) told the superintendent that the Charging Party was making telephone calls to the NJEA on Board time; 2) failed to obtain a corrected scattergram for the unit; 3) deprived the secretarial negotiations team members from having input into calculating the secretarial salary guides; 4) calculated the guides on a percentage rather than a dollar amount, leaving five secretaries without a raise for 1992-93; 5) dismissed the Charging Party from the negotiations team without just cause; 6) combined secretaries with custodians for a ratification; 7) allowed a para-professional to sign the secretaries agreement; 8) failed to arrange union meetings that could be attended by most unit members; 9) failed to follow the proper procedures for election of union officers; 10) failed to revise the union constitution to benefit all members.

Included with the above amendment were three additional, but separate, unfair practice charge forms (C-1B-1; C-1B-2; C-1B-3) in which Edwards alleged 1) that NJEA official, Dennis Testa, and representative Allen Fox, failed to assist her in seeking to revise the secretaries salary guides, and told her she could go to jail if she interfered with the Board's resolution to accept the new contract (C-1B-1); 2) that NJEA representative Mary Lou Mitchell,

and OEA President Bauernhuber, violated her rights by structuring salary guides without input from Edwards and other negotiating team members (C-1B-2); and 3) that NJEA representative, Allen Fox, committed an unfair practice by not taking action to fix the secretaries salary guides, and by stating that Edwards, and the other secretarial negotiations team member, would be held in contempt if they did not encourage the secretaries to ratify the new agreement (C-1B-3).

The Charging Party did not request specific remedies.

A Complaint and Notice of Hearing was issued on January 26, 1995. The Association filed an Answer on April 3, 1995, denying it violated the Act.

Hearings were held on June 27 and 28, 1995.<sup>2/</sup> Both parties indicated their intent to file post hearing briefs. Briefs were originally due by September 29, 1995. Pursuant to the parties requests the time for filing briefs was extended to November 10, 1995. To date, neither party has submitted a brief.

Based upon the entire record, I make the following:

#### FINDINGS OF FACT

1. Minnie Edwards has been employed by the Board as a secretary for many years. For the last several years she has been

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<sup>2/</sup> The hearings in this case were recorded in one transcript with continuous pagination and will be referred to as "T". The first hearing is recorded in T1-T149. The second day is recorded in T150-T277.

included in a secretarial unit represented by the OEA. For the 1991-92 school year Edwards received a salary of \$23,053. The collective agreement from which that salary came expired on June 30, 1992. Since there was no new collective agreement in place on July 1, 1992, Edwards, and other employees, effective July 1, moved up one step on the old salary guide at least until a new agreement became effective. Edwards, and four other secretaries, moved from the eighth to the ninth step. Going to the ninth step on the old guide was an increment that represented a \$1,232.00 raise to \$24,285, or an increase of 5.34 percent (T73-T79; T168; R-1A).

Edwards, and secretary Ann Jensen, had been appointed to the OEA negotiations team since at least 1992, and were active in negotiating the successor agreement to the contract expiring on June 30, 1992 (T17; T58). As negotiations were coming to conclusion in late 1993, OEA President Patricia Bauernhuber, who was also on OEA's negotiations team, thought it necessary to have a workshop conducted on how salary guides were created. NJEA UniServ Representative, Allen Fox, conducted the workshop for the team. Fox described the various options in constructing salary guides (T161-T162; T218).

A memorandum of agreement for a new collective agreement was finally reached on December 13, 1993 (J-2). It provided for a three year agreement to be effective from July 1, 1992 through June 30, 1995. Edwards and Jensen signed that agreement.

The salary provision of J-2 provided for a 5% raise inclusive of increment for each year of the agreement (T217). The

Board and OEA did not agree to a salary increase of an increment plus 5%, they agreed to just a 5% increase which included any increment (T190, T230). J-2 also provided that salary guides would be mutually developed, but there were no guides in J-2. The Board and/or OEA needed to construct the guides.

2. Edwards had been on negotiation teams that negotiated prior agreements with the Board and had always been involved in constructing salary guides, but was not involved in constructing the guides needed to implement the terms of J-2 (T17-T18). After J-2 was reached Bauernhuber asked MaryLou Mitchell of the NJEA to construct two guides. "One with five percent on the existing steps and one with five percent adding a step (T219).

Bauernhuber received those guides on December 14, 1993, and between that date and January 20, 1994, telephoned Edwards and Jensen several times to ask them to proofread the guides, but they did not make themselves available for that purpose. Finally, on January 27, 1994, Edwards and Jensen met with Bauernhuber and Fox to review the guides. They were shown both the guide adding a step (CP-1), and the guide that did not add a step (T157, T221).

Under CP-1 Edwards and Jensen would be at step nine for the 1992-93 school year earning \$24,206 (T158). They decided CP-1, the guide adding a step, was acceptable. There was no evidence they spotted a mistake on CP-1 at that time. They then asked Fox whether any mathematical error they might find could be corrected. He responded, "yes", and that "there was nothing that couldn't be

fixed" (T63; T159; T222-T223). Fox gave CP-1 to the Board's attorney that night for the Board to ratify (T159; T162-T163; T223).

3. On January 28, 1994 a notice (CP-5) was distributed announcing that the OEA and Board had reached a tentative agreement until salary guides were created.<sup>3/</sup> The Board approved the salary guide structure by mid-March 1994. The OEA then scheduled a pre-ratification meeting for its members to be held on or about March 22, 1994, with a ratification vote scheduled to be held on or about March 23, 1994 (T224).

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3/ CP-5 provides: The Orange Education Association and the Orange Board of Education reached a tentative agreement during their third mediation session. Both sides were directed by the Mediator to NOT discuss the details of this tentative agreement until the salary guides were created and negotiated.

The January weather conditions delayed the Team from meeting and finalizing salary guides to be presented to the Board. Meetings had to be canceled. The Board also canceled scheduled meetings.

On January 28, the proposed OEA salary guides for secretaries and custodian-maintenance members were given to the Board for approval.

If the Board approves the guides, the OEA Negotiations Team will then PRESENT the proposed package to members at a specially called MEETING. If the Board rejects the guides, the OEA will have to negotiate the guides.

The secretaries, custodians and maintenance members will be given the opportunity to:

- see the proposed packages
- ask questions & make comments
- decide the date of the ratification vote on the proposal

All secretaries, custodians and maintenance members will then VOTE on the proposal. The vote will be as always - majority will rule.



In anticipation of the March 22 meeting, Bauernhuber, on March 21, 1994, prepared a proposal (CP-6) to present to the secretaries for ratification. CP-6 originally included the salary schedule set forth in CP-1 (T248; T250).

Early in the morning on March 22, Edwards telephoned Bauernhuber and told her there was an error in the amount on step nine of the 1992/93 secretarial salary guide in CP-1. Bauernhuber telephoned MaryLou Mitchell regarding the matter, and a meeting was scheduled for 9:00 a.m. on March 23rd to review the problem with Edwards, but she could not attend the meeting (T225). Bauernhuber and Mitchell, however, did meet early on March 23rd to review the guide in response to Edwards concern and they confirmed an error had been made (T225-T226).

They discovered that when Edwards and four other secretaries moved from step eight to step nine of their old guide effective July 1, 1992, they received a \$1,232 increase from \$23,053 to \$24,285 which represented a raise of 5.34%, which was \$79.00 more than what a 5.0% increase would have been from the \$23,053 salary. Since the Board and Association had agreed to a 5% increase inclusive of increment, the figure \$24,206 was placed on step nine of CP-1 because that represented a 5% increase over the salary Edwards was earning prior to July 1992 which was \$23,053. When Bauernhuber and Mitchell realized that Edwards, Jensen, and others had already received a raise for more than what the Board and Association had agreed upon to be effective July 1, 1992, Mitchell

explained the situation to the Board's attorney, and they agreed that step nine of CP-1 should be changed to \$24,285 to reflect what Edwards, and others, were earning, but the Board did not approve any additional money above what had been negotiated for the new three year agreement (T226-T228).

As a result of the need to change step nine, Bauernhuber knew she needed to make changes in CP-6, the package of salary guides she created for the secretaries ratification meeting. She created two new documents, CP-2 and CP-3, which were spread sheets reflecting the change from \$24,206 to \$24,285 on step nine of the new 1992-93 salary guide. Those documents were substituted for documents in CP-6 which had reflected the \$24,206 salary (T228-T229).

CP-3 was given out to Edwards, and other employees, the day of the ratification vote (T30-T31, T251). It showed Edwards 1992-93 salary at step nine as \$24,285 which was 5.34% above her 1991-92 salary; her 1993-94 salary at step ten as \$25,416 which was 4.66% above the 1992-93 salary. The second year was less than 5% because it had to be adjusted down to make up for the greater than 5% increase in the first year; and her 1994-95 salary at step eleven as \$26,687 which was 5% above her 1993-94 salary (T167-T169).

Edwards did not participate in the ratification vote, but the salary guides were passed and became part of the final collective agreement, J-1 (T32-T33). Edwards believed that the salary guides set forth in CP-3 and J-1 were wrong at least as they pertained to her and the four other employees at step nine of the

new 1992-93 guide. She believed that for 1992-93 she was entitled to both the 5.34% increment she received effective July 1, 1992, and should have received a "raise" of 5% on top of that increment (T80; T82; T102). According to J-1 and J-2, however, she was only entitled to a total 5% increase above her \$23,053 1991-92 salary.

Later in March, Edwards contacted NJEA President, Dennis Testa, in an effort to have the secretarial salary guides placed on hold at least until they could be corrected to her satisfaction. Edwards claimed Testa told her it had been ratified, that nothing more could be done, and he allegedly told her she could go to jail if she interfered (T33). Edwards also called Fox for assistance. He told her "there was nothing he could do, ...that it had been ratified by the membership" (T34).

4. On March 28, 1994, Edwards sent a letter to Testa (C-1A-2) concerning the ratification process and what she believed were the salary guide errors. She subsequently spoke to Testa, Fox and Bauernhuber regarding these matters but was not satisfied with their responses (T36).

On April 2, 1994, Edwards sent a letter to Testa (C-1A-3) regarding the secretaries having been denied input into structuring the salary guides. Near the end of that letter Edwards claimed Bauernhuber had told the superintendent that she (Edwards) had called the NJEA on Board time. Edwards did not deny calling the NJEA on Board time, and there was no showing she was disciplined for such action.

On April 12, 1994, Fox received a letter from Edwards (C-1A-4) requesting that a letter be sent to the Board requesting clarification and recalculation of what she thought the parties had agreed to in negotiations. As a result of--and in response to--that letter Fox conducted a meeting later that day with Bauernhuber, Edwards, and two other secretaries (T163).

At that meeting Fox reviewed a package of documents (R-1 (R-1A--R-1J)) to show Edwards and the other secretaries that the guides were not in error. He explained that since they received a 5.34% increase as a result of their increment effective on July 1, 1992, the first year of the new agreement, they more than received the 5% raise (inclusive of increment) that they were entitled to pursuant to that agreement. He further explained that the second year had to be adjusted below 5% because of the greater than 5% increase in the first year. Although Edwards continued to argue she did not receive a raise, the two other secretaries understood and accepted the explanation (T164-T177, T231). But Edwards admitted that Bauernhuber corrected the salary guide error she (Edwards) first discovered in CP-1, changing step nine from \$24,206 to \$24,285 on the new 1992-93 guide to reflect the salary she actually received (T91-T92).

Prior to the conclusion of the April 12 meeting, and in response to C-1A-4, Edwards agreed that Fox would draft a letter to the Board asking for additional money to satisfy Edwards position. Fox told Edwards, however, he was not going to argue that the 5%

agreement the Association made was no good (T177-T178). On April 15, 1994, Fox sent a letter to Board President Johnson (C-1A-5) asking the Board to consider providing additional money intended to give Edwards, and the four other similarly situated secretaries, a raise above their increment.<sup>4/</sup>

Fox did not write C-1A-5 because he believed there was an error in the new salary guide. He explained that Edwards, and the other secretaries, received the 5% raises provided for by the contract. Rather, he wrote the letter to satisfy Edwards' demands to try to get more money for her and the other secretaries (T197,

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<sup>4/</sup> C-1A-5 provides: The Orange Education Association is requesting a reconsideration by the Orange Board of Education of the adjustment paid to one particular step on the new secretarial salary guide.

Specifically, five secretaries on step 8 of the 1991-92 base salary guide perceive a negative affect by the mathematics of salary guide construction. It is their impression that although their step received an increment in the first year of the Agreement, their step did not receive an additional adjustment reflecting an increase beyond the automatic increment. The actual math can be explained by your labor attorney or I am more than willing to discuss it with you.

The point is that several valuable employees of the Board now perceive an unwillingness by management to reward their performance with a salary adjustment beyond their increment. The balance between the secretaries work effort for the Board and the Board recognition of their effort has been upset by the lack of a salary adjustment.

The Association, therefore, seeks a reconsideration of only this particular step on the new salary guide in order to reestablish the harmony previously enjoyed by the parties.

Association representatives are available at your convenience to discuss the matter further.

T232-T233). The Board did not respond to C-1A-5, and Fox did not follow up on that matter (T178).

5. On April 19, 1994, the Board and Association signed the 1992-1995 collective agreement (J-1) which contained the same salary guide as CP-3.<sup>5/</sup> On April 25, 1994, Bauernhuber sent a letter to Edwards (C-1A-6) notifying her she (Bauernhuber) was rescinding her (Edwards) nomination to serve on the Association's negotiations team for the upcoming May 1994-May 1996 term. Edwards asked Bauernhuber why she was being removed from the team and Bauernhuber responded "she could do what she wanted to do" (T53). Edwards believed Bauernhuber was retaliating against her over the salary guide matter (T55), but she also admitted that Bauernhuber, as Association president, had the right to make committee appointments, and there was no guarantee that she (Edwards) had to remain on the negotiations team (T104, T107).

Bauernhuber explained that the negotiation team members needed to work well together in a unified manner, and since Edwards was angry at her, and not talking to her, it would not have been in the Association's best interest to keep her on the team (T234, T257). I credit Bauernhuber's testimony. It was evident from Edwards testimony and demeanor that she was angry at Bauernhuber over the salary guide construction.

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<sup>5/</sup> The duration language on the signature page of J-1 was incorrect. It indicated the contract was effective from July 1, 1993 to June 30, 1995. It should have been July 1, 1992 to June 30, 1995 (T238).

6. On May 2, 1994, Edwards sent a letter to Board President Johnson (C-1A-7) seeking to clarify statements she thought were misleading in Fox's letter, C-1A-5, asking for additional money. She indicated that the Board had not made an error, blamed it on the OEA, and asked that the guides be readjusted. On May 4, 1994, Edwards sent Testa a letter (C-1A-8) notifying him that she had been unfairly represented by the OEA and NJEA and would seek legal help. She also complained about being removed from the negotiations team and demanded justice.

On May 6, 1994, Edwards sent a memo to Bauernhuber (C-1A-9) in response to Bauernhuber's letter of April 25 (C-1A-6) notifying Edwards she would no longer be on the negotiations team. Edwards requested a written explanation as to why she was being removed from the team. Later that same day Bauernhuber sent a letter to Edwards (R-2) responding to both her May 6th letter (C-1A-9), and her May 2nd letter to Johnson (C-1A-7). Bauernhuber responded to specific criticisms Edwards had raised, and also explained that under the OEA Constitution and prior practice, the OEA president had the authority to determine the appointments to the negotiations team.

Edwards responded to R-2 by her own seven page letter of May 23, 1994 (CP-7). Edwards reviewed what she believed were the facts regarding the adoption of the salary guides, and her removal from the negotiations team, and in derogatory terminology criticized Bauernhuber for the way she handled both matters.

7. Edwards said she filed the unfair practice charge as a way to appeal Bauernhuber's decision to remove her from the negotiations team; she alleged she was not fairly represented and filed the charge against Testa and the NJEA because they did not help her in resolving the OEA problems in the beginning, and because they did not respond to her letters; she filed the charge against Mitchell because Mitchell did not take the guides she first structured and calculated back to the team; and filed the charge against Fox because he had told her that if there was anything wrong with the guides there was nothing that couldn't be fixed, but when she thought there was an error he wasn't willing to fix it (T56-T57, T63-T64).

#### ANALYSIS

The standards for determining whether a union violated its duty of fair representation were first established by the United States Supreme Court in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). The Court in Vaca held that:

...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, discriminatory or in bad faith. 386 U.S. at 190, 64 LRRM at 2376.

The Supreme Court, subsequently, also held that to establish a claim of a breach of the duty of fair representation:

...carries with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union



objectives. Amalgamated Assoc. of Street, Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

The Commission and the New Jersey courts have consistently embraced the Vaca and Amalgamated standards in adjudicating fair representation cases. See Saginario v. Attorney General, 87 N.J. 480 (1981); Belen v. Woodbridge Tp. Bd. Ed., 142 N.J. Super. 486, 491 (App. Div. 1976); Middlesex Cty., MacKaronis and NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. (6/16/82), recon. den. (10/5/82); FOP Lodge 94 and Cassidy, P.E.R.C. No. 91-108, 17 NJPER 347 (¶22156 1991); Fair Lawn Bd. Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98, (¶13040 1982); New Jersey Tpk. Ees. Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

In applying the fair representation standards established by the Supreme Court to this case I find neither the OEA, the NJEA, nor Bauernhuber, Fox, Mitchell or Testa violated the Act. The evidence did not support a conclusion that Edwards was discriminated against, or that anyone acted unreasonably or in bad faith toward her in the construction of the salary guides or in removing her from the negotiations team. Some of the comments Edwards attributed to Fox and Testa may have been made, but they were insufficient to support a 5.4(b)(1) violation. The evidence shows that Fox, on

behalf of himself, Testa and the NJEA, acted in good faith by responding to Edwards' concerns about the salary guide, and by explaining to her how the guide was constructed.

The Charging Party's argument here is based upon a fundamental misunderstanding of how the new 1992-95 collective agreement (J-1) affected the salaries the employees began receiving on July 1, 1992. Edwards mistakenly assumed she was entitled to a 5% increase on top of the increment she already received on July 1, 1992. But in accordance with the language in J-1, Edwards, for the period July 1, 1992-June 30, 1993, was only entitled to a 5% increase over the salary she was earning as of June 30, 1992 which was \$23,053.

The complicating factor for Edwards was that she did not understand that she received the July 1, 1992 increment only temporarily because no new agreement had been reached by that date. Once the new agreement was implemented, however, it was effective retroactive to July 1, 1992, which meant Edwards was only entitled to receive a 5% raise from the \$23,053 salary. Since Edwards July 1, 1992 increment was more than 5%, the Board could have insisted she return the difference between 5% and 5.34%, but the Association acted prudently to prevent that by agreeing to adjust Edwards step on the second year (1993-94) of the new guide (step ten) lower to make up the difference. The Association's actions in that regard were entirely reasonable and fair.

Similarly, when Edwards discovered a legitimate error in CP-1 (the guide originally setting the ninth step of the 1992-93 guide at \$24,206) Bauernhuber and Mitchell acted quickly and responsibly to correct that step to read \$24,285. The Association, thru Fox, then took the time to explain the situation to Edwards, but she was unwilling to accept the explanation.

Edwards unhappiness with the salary guides and her unwillingness to accept the Association's explanation of how they were structured is not the deciding factor in determining whether the Association violated her fair representation rights. The Association's obligation was to act fairly and reasonably in the best interests of the unit as a whole. That is precisely what it did in this case.

Edwards may not have been satisfied with the Association's efforts to change the salary guides to her liking, but a labor organization is not required to represent unit members to their complete satisfaction. See Ford Motor Co. v. Hoffman, 345 U.S. 330, 337-338 (1953); Belen; New Jersey Tpk. Auth., P.E.R.C. No. 88-61, 14 NJPER 111 (¶19041 1988). In Belen, for example, a group of employees represented within the negotiations unit objected to parts of a negotiated agreement. The Court held:

...the mere fact that a negotiated agreement results, as it did here, in a detriment to one group of employees did not establish a breach of duty by the union. The realities of labor-management relations which underlie this rule of law were expressed in Ford Motor Co. v. Hoffman, 345 U.S. 330 (1953), where the court wrote:

Any authority to negotiate derives its principal strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented. A major responsibility of negotiators is to weigh the relative advantages and disadvantages of differing proposals.

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

[at 337-338]

142 N.J. Super. at 491.

Here, in contrast to Belen, Edwards, Jensen, and the other secretaries were not treated differently by the terms of J-1. All employees were going to get the 15% percent (plus) raise over three years. Edwards received that raise, but was not entitled to more.

In addition to the fact that majority representatives do not need to completely satisfy their members, where a majority representative exercises its discretion in good faith, even proof of mere negligence, standing alone, will not be sufficient to prove a breach of the duty of fair representation. Service Employees Int'l Union, Local No. 579, AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977); Printing and Graphic Communication, Local No. 4, 249 NLRB No. 23, 104 LRRM 1050 (1980), reversed on other grounds 110 LRRM 2928

(1982); Bergen Comm. Collg., P.E.R.C. No. 86-77, 12 NJPER 90 (¶17031 1985); Council of N.J. State College Locals, D.U.P. No. 96-16, 22 NJPER \_\_\_\_ (¶\_\_\_\_\_ 1996).

Here, the Association did not act negligently, and made a reasonable effort to satisfy Edwards. It negotiated an agreement giving all employees the same percentage increase, it promptly corrected the error in the original 1992-93 guide, and, it repeatedly attempted to explain the salary guide construction to Edwards. None of that behavior was in violation of the Act.

The Charging Party's assertion that Bauernhuber violated the Act by removing her from the negotiations team similarly lacked merit. By April 1994 the relationship between Bauernhuber and Edwards had seriously deteriorated. Bauernhuber had the right to determine who would be on the team, and could not be forced to select someone who was not talking to her and was no longer cooperative. Under the circumstances that were in place here, Bauernhuber acted reasonably, and in the best interests of the whole unit, by removing Edwards from the team.

Finally, there was insufficient evidence that the Association violated its duty of fair representation by the manner in which it conducted its ratification vote, conducted its election for union officers, or signed J-1.

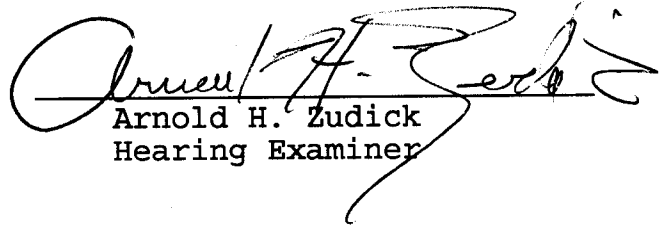
Accordingly, based upon the above facts and analysis, I make the following:

Conclusion of Law

The Association did not violate the Act by the manner in which it constructed the 1992-95 salary guides, or by removing Minnie Edwards from the negotiations team.

Recommendation

I recommend the complaint be dismissed.

  
Arnold H. Zudick  
Hearing Examiner

Dated: March 22, 1996  
Trenton, New Jersey