D.U.P. NO. 95-28

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

In the Matter of

UNION CITY BOARD OF EDUCATION
and UNION CITY EDUCATION ASSOCIATION,

Respondents,

-and- Docket No. CI-95-40

DOUGLAS ISHKANIAN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices orders the deferral of a case to binding arbitration. The unfair practice charge alleged that the majority representative violated the duty of fair representation and the employer refused to negotiate in good faith when it terminated the charging party in December 1993.

The parties had previously scheduled the discharge arbitration hearing, but had adjourned the matter a few times. Notwithstanding the substance of the allegations, the Director deferred the matter.

D.U.P. NO. 95-28

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

In the Matter of

UNION CITY BOARD OF EDUCATION
and UNION CITY EDUCATION ASSOCIATION,

Respondents,

-and- Docket No. CI-95-40

DOUGLAS ISHKANIAN,

Charging Party.

Appearances:

For the Respondent Board of Education
Patino-Treat and Rosen, attorneys
(Louis C. Rosen, of counsel)

For the Respondent Education Association
Zazzali, Zazzali Fagella & Nowak, attorneys
(Paul L. Kleinbaum, of counsel)

For the Charging Party
Douglas Ishkanian, pro se

REFUSAL TO ISSUE COMPLAINT

On January 4 and 18, and February 17, 1995, Douglas Ishkanian filed an unfair practice charge and amended charges against his employer, Union City Board of Education and majority representative, Union City Education Association/NJEA. Ishkanian alleges generally that he was employed by the Board as a maintenance person from July 1 - December 31, 1993; that he had difficulty performing his duties in a building under construction; that he complained to both employer and union representatives; that "rumors" of his termination circulated in fall 1993; that he was terminated

without notice or "reason" and the union "[sat] back and let [him] get fired." Ishkanian also alleges that arbitration hearings concerning these events have been scheduled and postponed several times (at least once by charging party); that one union attorney failed to inform him of other rights (equal employment, disability, etc.); that he sought and secured the advice of another union attorney but the NJEA "wasted precious time" and refused to discuss his complaints about the union; and that various employer representatives had "promised" him employment. These actions allegedly violate 5.4(a)(5)[1/] and (b)(1)[2/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On February 14, 1995, the Union City Board of Education filed a letter denying it engaged in any unfair practice. It asserts that Mr. Ishkanian is involved in two grievances that were processed to arbitration. One arbitration concerns his termination (Docket No. AR-94-459); the other concerns claimed accrued vacation and overtime pay (Docket No. AR-94-535).

1/ This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ This subsection 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."

The termination grievance was originally set for hearing on October 12, 1994. The Board requested an adjournment but the NJEA representative objected. An adjournment was granted by the arbitrator and the matter was rescheduled to December 14, 1994. The NJEA requested an adjournment of that hearing "on behalf of Mr. Ishkanian", due to health problems. No new date has been set.

The benefits grievance was originally scheduled for hearing on September 21, 1994. An adjournment was granted over the NJEA's objections and rescheduled to December 1, 1994. The Board sought another adjournment and the hearing was rescheduled for January 10, 1995. The NJEA then requested an adjournment, ostensibly based on Ishkanian's physician's recommendation.

The Board asserts that it is "ready, willing and able" to try the two cases.

Also on February 14, 1995, the Association filed a letter denying that it engaged in any unfair practice. It contends that the benefits arbitration has been "tentatively settled, depending in the outcome of the termination arbitration." It also asserted that Ishkanian consulted with two NJEA attorneys, not having been satisfied with the opinion of the first he visited. These consultations occurred in March and October 1994, respectively. Their multi-page opinion letters concerning Ishkanian's rights, contractual and otherwise, appear to address substantive issues involved.

In a phone call with a Commission staff agent, the NJEA attorney expressed a willingness, under certain conditions, to allow Mr. Ishkanian to be represented by an attorney of his own choosing at his termination arbitration.

The NJEA has extended to the charging party its services in the wake of an adverse employment action in accordance with its duty of fair representation. Vaca v. Sipes, 386 U.S. 171 (1967). The union is not only willing to proceed to binding grievance arbitration, it has extended to Ishkanian the option of retaining his own counsel. Any other complaint or suspicion which Ishkanian has asserted must be subsumed by the issue of his employment status. This notion is reinforced by the fact that Ishkanian's other grievance is "tentatively" resolved, pending the outcome of the grievance termination and the more obvious fact that the Board, not the union, terminated his employment and all other rights must flow from a determination of the "just cause" for that action.[3/]

Ishkanian also alleges that the union violated the Act by not informing him of rights he had under the New Jersey Law Against Discrimination and Americans with Disabilities Act. Assuming that Ishkanian conveyed the pertinent facts to the first attorney he consulted, who failed to inform him of those rights, I see no justification for issuing a Complaint. These facts were discussed

---

3/ I assume, for purposes of this decision, that Ishkanian is to be regarded as any other unit employee and that nothing in the collective agreement suggests otherwise.

with a second attorney who advised Ishkanian in a lengthy opinion letter in October 1994, that he had no case and if he thought he had one, timely charges could still be filed.

No majority representative has a duty to litigate meritless cases. No facts suggest that the union had good reason to believe or that it actually believed that Ishkanian had meritorious claims under ADA or NJLAD. Accordingly, nothing in the charge suggests that the Union City Education Association acted arbitrarily, discriminatorily or in bad faith. See, for example, D'Arigio v. N.J. State Board of Mediation, 119 N.J. 74 (1990); Saginario v. Attorney General, 87 N.J. 480 (1981).

Nor do I believe that the Board has engaged in conduct which violates the Act. Ishkanian has alleged no facts indicating that the Board took action against him because of his protected activity or had refused to negotiate in good faith concerning a term and condition of employment.

Although Mr. Ishkanian has demonstrated his general concern about a robust representation of and a decent respect for his employment rights, no facts suggest that either respondent violated its legal obligations under the Act.

Notwithstanding issues of timeliness of this charge and of substantive violation(s) of the Act, I am deferring this matter to arbitration in order to permit the parties to fulfill their contractual obligations. This policy of deferral complies with the section 5.3 directive that the parties' grievance procedure be used

to resolve contractually-based disputes. See East Windsor Reg. Bd. of Ed., E.D. No. 76-6, 1 NJPER 59 (1976).

Subsequent to the arbitration, this case may be reactivated upon a proper showing that (a) the dispute has not either been promptly resolved by amicable settlement in the grievance procedure or promptly submitted to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular, or (c) the grievance or arbitration procedures have reached a result which is repugnant to the Act.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: March 3, 1995
Trenton, New Jersey