

D.U.P. NO. 97-1

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY and  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
LOCAL 1761,

Respondents,

-and-

Docket No. CI-96-35

DIANE HAYES,

Charging Party.

SYNOPSIS

Employee's charge, alleging that the union unlawfully failed to process her grievance, was dismissed where charge failed to allege facts indicating that union's refusal was arbitrary, discriminatory, or in bad faith. Employee's charge, alleging that employer unjustly placed a letter of reprimand into her personnel file, created excessive restrictions on her ability to perform her job, to use sick leave and to take vacation days, was dismissed where there were no facts suggesting that employee was discriminated against based upon activity protected by the Act. Further, employee's charge, alleging that employer violated the collective negotiations agreement, was dismissed for lack of standing.

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Appearances:

For the University,  
Christine Mowry, Director, Office of Employee Relations

For AFSCME, Local 1761,  
Arthur C. Delo, Jr., Associate Director

For the Charging Party,  
Diane Hayes, pro se

REFUSAL TO ISSUE COMPLAINT

On December 4, 1995, Charging Party Diane Hayes filed an unfair practice charge with the Public Employment Relations Commission alleging that Rutgers University engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4, more specifically, subsections

5.4(a)(1) and (7).<sup>1/</sup> The charge also alleges that AFSCME Local 1761 violated subsections 5.4(b)(1) and (5)<sup>2/</sup> of the Act.

On February 22, 1996, Charging Party amended her unfair practice charge.

The Commission has the authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that final proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

For the reasons stated below, the Commission's complaint issuance standard has not been met.

Charging Party alleges that Rutgers unjustly placed a letter of reprimand into her personnel file, created excessive restrictions on her ability to perform her job, to use sick leave

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

<sup>2/</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."

and to take vacation days. Further, Charging Party alleged that Rutgers failed to enforce its no smoking policy.<sup>3/</sup>

Charging Party also alleges that Local 1761 failed to properly represent her in the grievance process regarding the above allegations against Rutgers.

Charging Party filed a grievance regarding the no smoking policy and the letter of reprimand. A step one grievance meeting was held on June 26, 1996. The parties discussed the no smoking policy until the before Charging Party left the meeting claiming that she did not feel well. After the grievance meeting, Betty Major of Local 1761 investigated whether the "letter of reprimand" was included in Charging Party's personnel file and represented to Charging Party that it was not.<sup>4/</sup>

There are no facts alleged in the charge which would indicate that Rutgers violated subsections 5.4(a)(1) and (7). Charging Party alleges that Clark failed to enforce Rutgers' no

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<sup>3/</sup> Charging Party alleges that Local 1761 failed to address her charges of race discrimination against Rutgers. Charging Party has appropriately filed a charge against Rutgers with the Equal Employment Opportunity Commission.

<sup>4/</sup> By letter dated April 10, 1996, I indicated to the parties that I was not inclined to issue a complaint on the allegations of Charging Party's charge. Further, I advised the parties that any additional information they wished to bring to my attention would have to be submitted by the close of business on April 23, 1996.

I received a letter from Charging Party on April 22, 1996, in which she reiterates her claims alleged in the unfair practice charge. Local 1761 filed a response to Charging Party's letter on June 12, 1996.

smoking policy. There is nothing alleged which, even if true, would indicate that Rutgers or Mr. Clark discriminated against Charging Party based on activity protected by the Act.

Normally, only the majority representative, not an individual employee has standing to assert that an employer breached its collective negotiations agreement. County of Essex, D.U.P. No. 96-4, 21 NJPER 308 (¶26195 1995); Camden Cty. Highway Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984).

There are no facts alleged in the charge which would indicate that AFSCME violated subsections 5.4(b)(1) and (5).

N.J.S.A. 34:13-5.3 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 interest of all such employees without discrimination and without regard to employee organization membership.

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances:

In the specific context of a challenge to a union's representation in processing a grievance, the United States Supreme Court has 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, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190 (1967) (Vaca). The courts and this Commission have consistently embraced the standards of Vaca in adjudicating such unfair representation claims. See, e.g., Saginario v. Attorney General, 87 N.J. 480 (1981); In re Board of

Chosen Freeholders of Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (April 1, 1982), pet. for certif. den. (6/16/82); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). [10 NJPER 13]

See also, Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967).

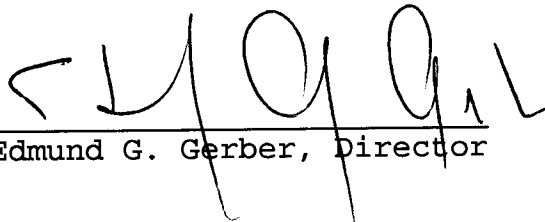
The U.S. Supreme Court has also held that to establish a claim of a breach of the duty of fair representation, such claim "...carried with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." Amalgamated Assn. of Street, Electric, Railway and Motor Coach Employees of American v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

Employee organizations are entitled to a wide range of reasonableness in determining how to best service all of their members. See Essex-Union Joint Meeting and Automatic Sales, Servicemen and Allied Workers, Local 575, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991); New Jersey Transit and ATU (Chimbumu), D.U.P. No. 95-23, 21 NJPER 54 (¶26038 1995); Jersey City Bd. of Ed., D.U.P. No. 93-7, 18 NJPER 455 (¶23206 1992). Further, a "majority representative does not have the obligation to present every grievance which a unit member asks it to submit." Camden County College, P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Trenton Bd. of Ed., P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986).

In a memo dated June 26, 1996, Clark summarized the grievance meeting. It is this memo that Hayes claims is a letter of reprimand. Local 1761 states in its June 12 letter that Clark's summary was "reasonable and comprehensive." Local 1761 then made the decision not to continue processing Charging Party's grievance. This refusal to continue to process the grievance is not a violation of its duty to represent unit employees. There are no other facts alleged in the charge which would indicate that Local 1761 violated subsections 5.4(b)(1) and (5).

Based upon all of the foregoing, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge.<sup>5/</sup> The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: July 1, 1996  
Trenton, New Jersey

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<sup>5/</sup> N.J.A.C. 19:14-2.3.