

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODBIDGE TOWNSHIP FEDERATION
OF TEACHERS LOCAL 822,

Respondent,

-and-

Docket No. CI-79-27-62

GLORIA RUBIN,

Charging Party.

SYNOPSIS

In an unfair practice proceeding brought by an individual employee, the Commission affirms and adopts the recommended report and decision of its Hearing Examiner. The Commission dismisses a complaint alleging that the Woodbridge Township Federation of Teachers violated N.J.S.A. 34:13A-5.4(b)(1) in its conduct with respect to the dissemination of information concerning a grievance it had filed on behalf of the charging party and all other school nurses it represents. The Commission, in agreement with the Hearing Examiner, concludes that while the Federation should have kept non-members as well apprised of the progress of the grievance as members, its conduct did not amount to a breach of the union's duty of fair representation since they did notify the non-members that it had filed the grievance and it processed it on behalf of all school nurses.

P.E.R.C. NO. 81-66

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Appearances:

For the Respondent, Sauer, Boyle, Dwyer, Canellis
& Cambria, Esqs.
(William A. Cambria, of Counsel)

For the Charging Party, Klausner & Hunter, Esqs.
(Stephen E. Klausner, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on November 13, 1978 by Gloria Rubin, a school nurse employed by the Woodbridge Township School District, alleging that the Woodbridge Township Federation of Teachers Local 822 (the "Union") had engaged in conduct violative of the New Jersey Employer-Employee Relations Act. The Union is the exclusive majority representative of a collective negotiations unit which includes school nurses. The Charge alleged that the Union, which filed a grievance on behalf of all school nurses it represents, violated the Act by notifying only school nurses who are members of the Union of its action in filing a grievance. Its

failure to give non-union unit members, including Rubin, similar information is alleged to constitute a violation of N.J.S.A. 34:13A-5.4(b)(1) and (2).^{1/}

Pursuant to a Complaint and Notice of Hearing, a hearing was held on March 24, 1980 before Commission Hearing Examiner Edmund G. Gerber at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Following receipt of post-hearing briefs from the parties, the Hearing Examiner issued his Recommended Report and Decision on August 20, 1980. H.E. No. 81-4, 6 NJPER ____ (¶ ____ 1980). The case is now before us to consider the Hearing Examiner's report in light of exceptions and cross-exceptions filed by both parties.

The Hearing Examiner found that the union did notify all nurses, including Rubin, by letter about the filing of a grievance. While the Hearing Examiner noted that the dissemination of more information concerning the grievance to members than to non-members was objectionable,^{2/} he concluded that since there was no allegation of evidence to show that the union's processing of the grievance (which was filed on behalf of all nurses, including the Charging Party) was improper, he did not believe that this

- ^{1/} 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 and (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."
- ^{2/} As noted by the Hearing Examiner, the Charging Party conceded that there is no requirement that a majority representative disseminate notice of grievance to the membership, nor to the affected individuals. Her contention is that whatever dissemination is made must be evenhanded.

conduct amounted to a breach of the duty of fair representation. Under all the circumstances involved in the case, he found that the conduct was de minimis.

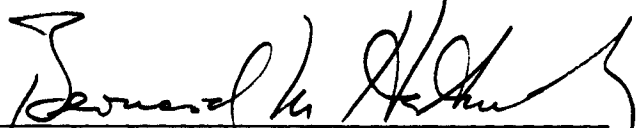
The Charging Party has filed exceptions challenging the Hearing Examiner's recommended disposition of the case and the Union has filed cross-exceptions, objecting, inter alia to the Hearing Examiner's statement that there was "some measure" of inequality in the Union's actions.

Having reviewed the entire record in this matter, including the exceptions and cross-exceptions filed by the parties, we determine that the findings of fact and conclusions of law made by the Hearing Examiner are based upon substantial evidence on the record and hereby adopt them. We similarly conclude that the Union did not breach its duty of fair representation and determine that the Complaint should be dismissed, essentially for the reasons stated in the Hearing Examiner's Recommended Report and Decision.

ORDER

The Complaint in this matter is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION



Bernard M. Hartnett, Jr.
Acting Chairman

Commissioners Hartnett, Graves, Newbaker and Parcells voted in favor of this decision. None opposed. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
October 21, 1980
ISSUED: October 22, 1980

STATE OF NEW JERSEY
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Docket No. CI-79-27-62

GLORIA RUBIN,

Charging Party.

SYNOPSIS

In an Unfair Practice Charge brought by Gloria Rubin, an individual, a Hearing Examiner recommends to the Public Employment Relations Commission that the Unfair Practice Charge be dismissed. Gloria Rubin, a nurse in the Woodbridge Township School District, brought this action claiming that she was discriminated against by the Woodbridge Township Federation of Teachers Local 822 when they failed to notify her that they had filed a grievance on behalf of all nurses in the district. The Hearing Examiner however found that she was notified of the grievance. The Federation did send out notices on a number of occasions to only its own members and not to Gloria Rubin, but the Hearing Examiner recommended that the Commission find this failure of equal notice de minimis.

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.

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Appearances:

For the Woodbridge Township Federation of Teachers
Local 822

Sauer, Boyle, Dwyer, Canellis & Cambria, Esqs.
(William A. Cambria, Esq.)

For Gloria Rubin

Stephen E. Klausner, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the Commission) on November 13, 1978, by Gloria Rubin, an individual, alleging that the Woodbridge Township Federation of Teachers, Local 822 (the Respondent or Union) had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the Act) in that the Respondent notified only Union members of its actions in filing a grievance. The Union did not notify nonunion unit members, including Rubin, thereby failing to give fair and adequate representation to all of the employees it represents.

This is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (2) of the Act. ^{1/} It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 6, 1979. Pursuant to the Complaint and Notice of Hearing, a hearing was held on March 24, 1980, in New Brunswick, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties filed post-hearing briefs by June 17, 1980.

Upon the entire record the Hearing Examiner makes the following findings of facts. The Union is the exclusive majority representative for all nurses and teachers employed by the Woodbridge Township Board of Education. Gloria Rubin is a nurse within the Woodbridge Township Board of Education. Rubin is not a member of the Union. She is, however, the president of the Woodbridge Township School Nurses Association (WTSNA), which is a social organization and does not seek to represent nurses for the purposes of collective bargaining.

Prior to September 1977 there was a school board policy which required school nurses to transfer school children in their own vehicles to the student's home or hospital should the student be injured or taken ill. Nurses received a \$200 annual stipend for the use of their vehicles.

^{1/} This subsection prohibits 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization."

In September 1977 Rubin was told that the nurses would no longer be given a stipend but, rather, receive a mileage allowance of 15¢ a mile for actual use of her vehicle. Rubin approached the officers of the Union and requested to file a grievance. Rubin received a letter from the Union dated October 12, 1977, in which it turned down her request to file a grievance. The letter stated that the change in reimbursement policy was negotiated by the Union to ensure that all employees under the agreement, not just the nurses, would be paid according to the actual miles driven in connection with school activities.

The WTSNA retained an attorney and instituted litigation before the Commissioner of Education concerning the nurses' use of private automobiles. Although this litigation is apparently not yet completely resolved, in May 1978, with the consent of the parties, the Commissioner issued a directive to the Woodbridge Board requiring it to prepare a written policy on the transportation of students. The Board formulated a written policy in June of 1978 which among other things requires that an administrator or principal must decide if a medical emergency exists before a nurse could use her own automobile. The Union objected to and on September 15, 1978, filed a grievance over this policy claiming the Board unilaterally altered the negotiated terms and conditions of employment. Although there are over 20 nurses in the unit, only three nurses, all who are Union members, were notified and kept apprised of the grievance. ^{2/} These

^{2/} Raymond Peterson, the Union president, testified that these three nurses were the Union's nurse representatives and it was their responsibility to inform the other nurses of the grievance. The record discloses however that none of the non-member nurses in the unit were so informed.

three nurses received carbon copies of their correspondence concerning the grievance. ^{3/} Rubin first became aware of the grievance in October of 1978 after reading of it in a Union newsletter.

However, on November 9, 1978, the Union sent a letter to all nurses including Rubin explaining the state of the grievance and asking if individual nurses would be willing to testify if the grievance was brought to arbitration. ^{4/}

Conclusions of Law

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

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

Out of this language flows the Union's duty of fair representation. In the Matter of New Jersey Turnpike Employees Union, Local 194, IFPTE, AFL-CIO and Walter Kaczmarek, Jr., PERC No. 80-38, NJPER (1979), the Commission held that in considering a union's duty of fair representation, certain principles can be identified.

The union must exercise reasonable care and diligence in investigating, processing and in presenting a grievance. It must make a good faith judgment in determining the merit of the grievance, and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit.

^{3/} This correspondence consists of three letters sent in September, October and November of 1978.

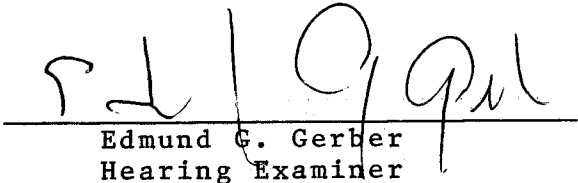
^{4/} It is noted that the original charge in this matter was signed by the Charging Party on November 8, 1979, but it was not filed with the Commission's office until November 13, 1979, and the envelope in which the union received a copy of the charge is postmarked November 11, 1979. Accordingly I find that it is evident that the November 9 letter was not sent in response to the Union's receipt of the instant charge.

There is nothing in this test which refers to the right of dissemination of information. The charging party concedes that "Notice of grievances need not be disseminated to the membership and probably need not be disseminated to the individuals actually effected by the grievance." It is argued that "Where, however, as herein the Union opts to distribute the grievance it must do so evenhandedly without any reference to Union membership. Respondent, by its conduct, has singled out non-members for different and in fact inferior treatment."

While there is some measure of inequality in Rubin's treatment based upon her nonunion status, the inequality does not go to the essential elements of the duty of fair representation; that is the right to have a grievance processed and the right to have a grievance processed with due diligence. There was no substantive harm done to Rubin and it must be emphasized that Rubin was contacted about the grievance. The inequality of treatment by the Union in this matter, although objectionable under the circumstances, is de minimis. Accordingly, the undersigned hereby recommends that the instant matter be dismissed in its entirety by the Commission.

Recommended Order

It is hereby recommended that the Unfair Practice Charge in this matter be dismissed in its entirety.


Edmund G. Gerber
Hearing Examiner

DATED: August 20, 1980
Trenton, New Jersey