

D.U.P. NO. 97-14

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

In the Matter of

CERTIFIED SHORTHAND REPORTERS and
NEW JERSEY STATE JUDICIARY and
OPEIU, LOCAL 32,

Respondents,

-and-

Docket Nos. CI-96-24
CI-96-25
CI-96-26

JOANNE N. YUHASZ,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge, CI-96-24, against CSRA-NJ, finding the allegations to be beyond the statute of limitations.

The Director dismisses allegations against the State in CI-96-25 involving the State's acceptance of Local 32's settlement of two grievances. The Director also dismisses certain allegations as being untimely or lacking specificity. Further, the Director dismisses allegations involving the State's failure to follow the grievance procedure, as the procedure is self-executing and culminates in binding arbitration.

As to CI-96-26, the Director dismisses allegations involving Local 32's settlement of grievances, finding no evidence or allegation that Local 32 acted arbitrarily, discriminatorily or in bad faith. The Director also dismisses alleged Weingarten violations, finding that Weingarten did not apply to any of the situations alleged. The Director also dismisses certain allegations for lacking specificity and dismisses others for being untimely.

Further, the Director dismisses allegations that Local 32 committed an unfair practice by negotiating a change in the agreement and allegations that Yuhasz was prevented from voting on changes to the agreement.

Finally, the Director issues a Complaint and Notice of Hearing with respect to the remaining allegations in CI-96-25 and CI-96-26.

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Appearances:

For the Respondent, Certified Shorthand Reports
Susan Scardilli, President

For the Respondent, New Jersey State Judiciary
Peter Verniero, Attorney General
(Matthew R. Gabrielson, Deputy Attorney General)

For the Respondent, OPEIU Local 32
Schneider, Goldberger, Cohen, Finn, Solomon, Leder &
Montalbano, attorneys
(James M. Mets, of counsel)

For the Charging Party
Law Offices of William J. Courtney, attorney
(Jeffrey J. Mahoney, of counsel)

DECISION

On October 24, 1996 and October 25, 1996, Joanne N. Yuhasz filed unfair practice charges with the Public Employment Relations Commission against Local 32, Office and Professional Employees International Union, the Certified Shorthand Reporters Association of New Jersey (CSRA-NJ) and the State of New Jersey, Administrative

Office of the Courts alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The charges against CSRA-NJ and Local 32, CI-96-24 and CI-96-25 respectively, allege violations of subsections 5.4(b)(1) and (5) of the Act.^{1/} Specifically, Sections A. through H. of the charges assert that CSRA-NJ and Local 32 violated the Act by accepting Local 32's Step 2 settlement of her November 15, 1994 and January 4, 1995 grievances without first consulting Yuhasz. Yuhasz claims she had previously rejected the Step 2 settlement and that under the grievance procedure, the unit member has the absolute right to proceed to Step 3 if not satisfied with the Employer's decision at Step 2.

In Section I. 1), Yuhasz alleges that Local 32 and CSRA-NJ denied her initial protective representation against the AOC thereby allowing management to: a) issue false evaluations against her; b) tamper with her personnel file; and c) exclude her from work-related enhancement projects in favor of less senior employees. Further, in Section I. 2), Yuhasz alleges that Local 32 and CSRA-NJ failed to represent her on disciplinary suspensions; Section I. 3) alleges that the Respondents refused to process grievances filed on a) May 11, 1994; b) October 19, 1994; c) November 3, 1994; d) November 10,

^{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. (5) Violating any of the rules and regulations established by the commission."

1994; e) November 15, 1994; f) January 4, 1995; g) April 13, 1995 and h) June 7, 1995.

Section I. 4) alleges that CSRA-NJ and Local 32 colluded with the AOC to a) create a hostile work environment and exclude her from work-related activities and b) offering her favorable treatment in exchange for her not filing a grievance. Finally, in Section I. 5), Yuhasz claims the Respondents colluded with the AOC to transfer her in retaliation for her exercising protected rights by: a) changing Article VII of the agreement between CSRA-NJ and the Judiciary allowing the AOC to transfer her; b) not notifying her or other CSRA-NJ members of the change in the contract and; c) preventing her from voting on changes in the agreement.

The charge against the AOC, CI-96-25, alleges that the AOC violated subsections 5.4(a)(1), (3) and (4) of the Act.^{2/} Specifically, Sections A. through F. of the charge assert the AOC acted unlawfully by accepting Local 32's April 26, 1995 invalid settlement of her November 15, 1994 and January 4, 1995 grievances at Step 2 and by refusing to proceed with her appeal to Step 3,

^{2/} 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

despite the fact that the grievance procedure provides her the absolute right to proceed to Step 3.

Section J of the charge asserts that on June 19, 1995, the AOC reassigned her from the Morris Vicinage to the Passaic Vicinage in retaliation for her engaging in protected activity. In Section K, Yuhasz claims that the AOC violated the Act by: 1) using the grievance procedure to inflict emotional distress on her; and 2) not taking action to correct her supervisors for retaliating against her for engaging in protected activity. Section K. 3) alleges that the AOC failed to follow procedures and refused to fully process grievances on a) December 10, 1991, b) November 10, 1992, c) January 11, 1993, d) February 21, 1993, e) March 18, 1993, f) April 21, 1993, g) August 20, 1993, h) September 20, 1993, i) May 11, 1994, j) October 19, 1994, k) November 3, 1994, l) November 10, 1994, m) November 15, 1995, n) January 4, 1995, o) April 13, 1995 and p) June 7, 1995.

Section K further charges that the AOC violated the Act by 4) creating a hostile work environment and trying to force Yuhasz to transfer to another Vicinage; 5) issuing incorrect evaluations; 6) tampering with her personnel file; 7) excluding her from work-related activities and equipment upgrades; 8) forcing her to provide ASC II disks to Public Defender's at a minimal cost; 9) offering to bear the cost of ASC II disk upgrade to some official reporters; but not her; and 10) verbally threatening her and other reporters with transfer if they refuse to record Megan's Law Hearings.

CSRA-NJ asserts that CI-96-24 should be dismissed, as they are no longer the majority representative of Yuhasz. Since September 1994, Local 32 has been the majority representative of the unit of employees that includes Yuhasz. Accordingly, CSRA-NJ was not involved in the processing of or alleged improper settlement of the November 15, 1994 and January 4, 1995 grievances described in her charge. Further, CSRA claims it always provided support and representation to Yuhasz when it was her majority representative prior to September 1994.

The AOC further requests that CI-96-25 be dismissed. It denies Yuhasz' claim that the grievance procedure provides her the absolute right to proceed to Step 3 if not satisfied with the Employer's decision at Step 2. Rather, Article XVIII provides that the Association's decision to terminate a grievance at any step shall be final as to the interests of the grievant (as well as the Association). Hence, Local 32's settlement of her grievances was not invalid and thus, the AOC did not violate the Act when it accepted it.

Also, the AOC points out that Yuhasz deliberately chose not to represent herself, but rather chose to be represented by the union. It also notes that the grievance form contains no provision for an employee to process a grievance beyond Step 1.

Further, according to the AOC, Yuhasz' allegation in Section J. that she was improperly transferred from the Morris to the Passaic Vicinage is meritless, as the AOC acted within its

discretion to transfer Yuhasz, based on her long-standing failure to communicate effectively with her supervisors. Moreover, the transfer was expressly authorized by the parties' agreement, and the AOC's right to transfer was acknowledged by Yuhasz in her July 15, 1974 employment application. Finally, the AOC denies the allegations set forth in Section K. 1) through 10).

We have conducted an administrative investigation into the allegations of the charges. These facts appear.

Yuhasz is employed by the AOC as an official court reporter and is a part of a unit of employees represented by Local 32. Local 32 has represented the unit since September 1994; prior to then, the unit was represented by CSRA-NJ.

Local 32 and the AOC are parties to a collective negotiations agreement which ran from July 1, 1992 through June 30, 1995. The agreement contains a self-executing grievance procedure, Article XVIII, which culminates in binding arbitration.

The grievance procedure states, "The employee or the Association's decision to terminate a grievance at any step shall be final to the interests of the grievant and the Association."

Further, the procedure specifies that an employee may pursue a grievance without Association representation.

Finally, Article VII of the Agreement, in pertinent part, provides "The Judiciary may, at its discretion, transfer an Official Reporter from one Vicinage to another."

Yuhasz was transferred from the Morris Vicinage to the Passaic Vicinage on June 19, 1995.

ANALYSIS

CI-96-24

N.J.S.A. 34:13A-5.4(c) provides:

that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

See State of New Jersey, D.U.P. No. 93-18, 19 NJPER 75 (¶24034 1992).

Here, CSRA-NJ has not been the majority representative of Yuhasz since September 1994. Therefore, her allegations against CSRA-NJ are well beyond the six-month statute of limitations set forth in N.J.S.A. 34:13A-5.4(c). Accordingly, I dismiss CI-96-24.

CI-96-25

Yuhasz's allegations in Section A. through I. are meritless, as Article XVIII specifically provides that "the Association's decision to terminate a grievance at any step shall be final to the interests of the grievant and the Association..." Accordingly, the AOC did not violate Yuhasz' rights when it accepted Local 32's settlement. See Red Bank Reg. Ed. Assn. v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978).

Yuhasz' claim that she had the absolute right to pursue the grievance, despite the Association's settlement of it, cannot be accepted; otherwise the previously cited language would be rendered meaningless.

As to Section J., I will issue a Complaint and Notice of Hearing. However, her allegations in Section K. 3) a through o) are dismissed, as they are untimely. They involve grievances that were filed over six months prior to the filing of the charge and thus fall outside of the statute of limitations set forth in N.J.S.A. 34:13A-5.4(c).

As to the allegation in Section K. 3) p) involving the June 7, 1995 grievance, the grievance procedure is self-executing. The Commission has repeatedly held that assertions of an employer's refusal to respond to a grievance, or its improper treatment of a grievance at an intermediate step of the grievance procedure, in and of itself, is not an unfair practice, when the contract provides for a self-executing grievance procedure which culminates in binding arbitration. Wayne Bd. of Ed., D.U.P. No. 92-9, 18 NJPER 105 (¶23050 1992); See New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986). Here, Article XVIII permits the grievant to proceed to the next step of the procedure, when not satisfied with the results at any step. Accordingly, I dismiss Section K. 3) p). Wayne Bd. of Ed.; New Jersey Transit.

Finally, I dismiss the allegations in Section K. 4) through 10), as they lack the specificity required by N.J.A.C. 19:14-1.3. This rule provides that a charge shall contain:

A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the time and place the alleged acts occurred, the names of the persons

alleged to have committed such acts and the subsection(s) of the Act alleged to have been violated.

The above allegations fail to include the times and places of the alleged actions and the names of the persons who allegedly committed them; thus, I am inclined to dismiss them pursuant to N.J.A.C. 19:14-1.3. See CWA and Williams, D.U.P. No. 95-7, 20 NJPER 417 (¶25213 1994).

CI-96-26

I dismiss Yuhasz' allegations in Sections A through H of CI-96-26.

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) ("Middlesex County"); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) ("Local 194"); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). [footnote omitted]

We have also stated that a union should attempt to exercise reasonable care and diligence in investigating, processing and presenting grievances; it should exercise good faith in determining the merits 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. Middlesex County; Local 194. All the circumstances of a particular case, however, must be considered before a determination can be made concerning whether a majority representative has acted in bad faith, discriminatorily, or arbitrarily under Vaca standards. [OPEIU Local 153 at 13.]

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). Where a majority representative exercises its discretion in good faith, proof of mere negligence, standing alone, does not suffice to prove a breach of the duty of fair representation. Service Employees International 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).

Here, there is no evidence or allegation that Local 32 acted arbitrarily, discriminatorily or in bad faith in settling Yuhasz' grievances. OPEIU; Local 153. Further, Yuhasz has not presented evidence of discrimination against her that is intentional, severe and unrelated to legitimate union objectives.

Amalgamated Assn. See also Rutgers and AFSCME and Searight, D.U.P. No. 94-1, 19 NJPER 426 (¶24192 1993). Therefore, I dismiss Sections A. through H.^{3/}

In Section I. 1) of her charge, Yuhasz alleges that her rights were violated when Local 32 denied her representation, thus allowing the AOC to a) issue false evaluations; b) transfer her personnel file and c) exclude her from work-related enhancement projects. In UMDNJ and CIR, P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993), recon. granted P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd 21 NJPER 319 (¶26203 App. Div. 1995), aff'd ___ N.J. ___ (1996), the New Jersey Supreme Court adopted the holding in NLRB v. Weingarten, 420 U.S. 251 (1975) as to public employees. Under Weingarten and UMDNJ and CIR, an employee is entitled to have a union representative present at an investigatory interview which the employee reasonably believes might result in discipline.

However, none of the three alleged instances would trigger Weingarten rights, as they were not investigatory interviews where Yuhasz could have reasonably believed discipline might result. In fact, she is not alleging that any discipline was received as a result of these instances.

In any event, the allegations listed in Section I. 1), 2) and 4) lack the specificity required by N.J.A.C. 19:14-1.3. See

^{3/} Although, under the agreement, Yuhasz has the right to pursue grievances on her own, the union has the primary responsibility to process the grievances it presents. Red Bank Reg. Ed. Ass'n.

supra p. 9. They fail to include the dates of the alleged actions and the names of the persons who allegedly committed them; thus, I dismiss them pursuant to the rule. See CWA and Williams.

Further, Section I. 3) a) through g) must be dismissed, as the grievances alleged therein were filed over six months prior to the filing of the charge. Thus, the allegations therein fall outside of the statute of limitations set forth in N.J.S.A. 34:13A-5.4(c). However, the allegation in Section I. 3) h), involving the alleged refusal to process the June 7, 1995 grievance is timely and, since Local 32 has not responded to this allegation, I will issue a Complaint and Notice of Hearing with respect to it.

I dismiss the allegation set forth in Section I. 5) a) as it does not amount to a breach of the duty of fair representation. A majority representative is entitled to a "...wide range of reasonableness..." in negotiating provisions of an agreement. The Court wrote in Ford Motor Co. v. Huffman, 345 U.S. 330, 31 LRRM 2548 (1953):

...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 to a statutory bargaining representative in serving a unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

(345 U.S. at 338, 31 LRRM at 2551).

Belen v. Woodbridge Tp. Bd. of Ed., et al., 142 N.J. Super. 486 (App. Div. 1976), certif. den. 72 N.J. 458 (1976) adopts the Ford Motor Co. standard for evaluating the conduct of a majority representative in negotiating agreements. New Providence Bd. of Ed., D.U.P. No. 94-5, 19 NJPER 432 (¶24197 1993).

Based on the above, Local 32 did not commit an unfair practice by negotiating the change in Article VII described in Section I. 5 a). Local 32 has a wide range of reasonableness in negotiations. Ford Motor Co. The changed Article affects all unit members, not just Yuhasz. No facts have been alleged or presented that show that Local 32 made a deliberate decision to cause Yuhasz economic harm. See City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982).


As for Section I. 5) c), I find that this allegation be dismissed as it fails to present any specific facts explaining how Yuhasz was prevented from voting on changes to the agreement. In any event, contract ratification procedures are generally beyond the scope of our jurisdiction. C.W.A. and Williams; Camden Cty Coll. Faculty Ass'n., D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987). Finally, I will issue a Complaint and Notice of Hearing with respect to the allegations in I. 5) b).

CONCLUSION

Based on the foregoing, I dismiss CI-96-24. Further, I dismiss CI-96-25 except for Section J. I will issue a Complaint and

Notice of Hearing with respect to that Section. Finally, I dismiss CI-96-26, except for Section I. 3) h) and Section I. 5) b). I will issue a Complaint and Notice of Hearing with respect to them.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 19, 1996
Trenton, New Jersey