

D.U.P. NO. 2018-11

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

In the Matter of

HOPATCONG EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-2016-043

MAUREEN P. GALLONE,

Charging Party.

**SYNOPSIS**

The Acting Director of Unfair Practices dismisses an unfair practice charge filed by Maureen P. Gallone (Gallone) against the Hopatcong Education Association (HEA). Gallone alleged HEA breached its duty of fair representation when the salary guide resulting from its negotiations with the Hopatcong Borough Board of Education (Board) and ratified by its membership contained disparities in wage increases at different steps compared to prior salary guides. The Acting Director found that the disparities alone did not violate the Act and that Gallone had not alleged facts indicating bad faith or a deliberate decision to cause her harm.

Gallone also alleged that HEA violated a member's right to communicate. The Acting Director found that this allegation was untimely. The Acting Director also found that Gallone had not alleged that HEA caused a change to the salary guide in retaliation against the member or otherwise acted coercively or in bad faith.

D.U.P. NO. 2018-11

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

In the Matter of

HOPATCONG EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-2016-043

MAUREEN P. GALLONE,

Charging Party.

Appearances:

For the Respondent,  
Bucceri and Pincus, attorneys  
(Sheldon H. Pincus, of counsel)

For the Charging Party,  
(Maureen P. Gallone, pro se)

**REFUSAL TO ISSUE COMPLAINT**

On April 28, 2016, Maureen P. Gallone (Gallone) filed an unfair practice charge against Hopatcong Education Association (HEA). The charge alleges a violation of N.J.S.A. 34:13A-5.4b (1), (3), and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).<sup>1/</sup> The gravamen of the

---

<sup>1/</sup> N.J.S.A. 34:13A-5.4b 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....(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit....(5) Violating any of the rules and regulations established by the commission."

charge is that HEA breached its duty of fair representation on or about January 21, 2016, when the salary guide resulting from its negotiations with Hopatcong Borough Board of Education (Board) was ratified by HEA membership but failed to follow NJEA published guidelines for salary guide development, resulting in disparities in wage increases between unit members at different steps and an alleged loss of career earnings for Gallone totaling \$45,725.

On June 2, 2016, HEA filed a position statement and served it on Gallone. HEA argues that Gallone has failed to allege facts indicating that HEA acted with malicious intent, bad faith, or discriminatory animus. It maintains that it acted in the best interest of its members collectively during protracted negotiations with the Board, and that Gallone's personal dissatisfaction with the results of the negotiations does not set forth a claim under the Act.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. I find the following facts.

Gallone was hired as a Board teacher under a 2006-2007 negotiated salary guide with 10 steps. Each salaried step varied, depending on the lateral placement of the teacher, in consideration of the education degree and number of credits earned. In the 2006-2007 guide, for all categories, the difference between the highest step and the third highest step was \$10,680, or an average of \$5,340 per step, while the difference between the third highest step and the lowest step was \$18,165, or an average of \$2,595 per step. The 2015-2016 guide of the negotiated Memorandum of Agreement (MOA) presented by HEA to its members for ratification had different salary amounts and 12 steps on which teachers could be placed. The difference between the highest step and the third highest step for all categories was \$20,265, or an average of \$10,132.50 per step, while the difference between the third highest step and the lowest step for all categories was \$7,095 (except \$7,145 for MA+45),<sup>2/</sup> or an average of \$788.33 per step. Comparing the highest three steps of each guide, one observes that the average difference between steps increased 89.7% in the 2015-2016 guide. Comparing the lower steps of each guide, one sees that the

---

<sup>2/</sup> Gallone's lateral placement category for the 2015-2016 school year was MA+15.

average difference between steps decreased 69.6% in the 2015-2016 guide.<sup>3/</sup>

In a membership meeting on January 21, 2016, NJEA Field Representative John Ropars presented the MOA and salary guide and asked if anyone had questions. Gallone read aloud from the NJEA's publication, Guidelines for Salary Development (2001), which, she contended, was not followed. She read the changes in salary in the MA lateral placement category between the 2006-2007 guide (under which she was hired) and the 2013-2014 guide, showing that Steps 1 and 2 increased \$9,680, Step 3 increased \$9,585, Step 4 increased \$7,475, Step 5 increased \$4,585, and Step 6 increased \$1,195. However, Step 7 decreased \$2,695, Step 8 decreased \$7,085, and Step 9 decreased \$11,975, while the top of the guide increased \$8,050.<sup>4/</sup>

---

<sup>3/</sup> The MOA included increases when compared to the 2013-2014 salary guide for all levels of longevity as follows: for 10 years, from \$350 to \$500; for 15 years, from \$500 to \$800; for 20 years, from \$1,200 to \$1,500; for 25 years from \$1,500 to \$1,800; and a new 30 year longevity pay of \$2,000.

<sup>4/</sup> Gallone uses the term "bubble" to refer to the resulting effect of the changes on employees advancing through the middle steps, whereby they received very little or no raises over the years despite movement along the steps in comparison to employees in the lower or top steps. Under the MOA, the bubble moved to Steps 10 and 11 for the 2014-2015 school year, Steps 11 and 12 for the 2015-2016 school year, Steps 12 and 13 for the 2016-2017 school year, and Steps 13 and 14 for the 2017-2018 school year.

In the meeting, Gallone asked Ropars if the negotiated guide was considered "fair representation," to which he responded that it was not. He reportedly said that it was not possible to make everyone happy, and that the negotiators tried to "piss off" as few people as possible. She asked Ropars for his suggested remedy. He replied that she could speak to her building representative, speak to a member of the negotiations team, or vote "no" in the upcoming membership ratification vote on the MOA. She stated that she had already done each of those before to no avail. She asked if she could file an unfair practice charge. He agreed but explained why he thought she would not prevail. The membership ratified the MOA by a vote of 139 to 8. The Board unanimously ratified the MOA on January 25, 2016. Gallone filed her unfair practice charge on April 28, 2016, less than six months after HEA ratified the MOA.

The unfair practice charge reports Gallone's earlier efforts to resolve the salary guide "bubble" issue and the responses she received. The charge also recounts events leading up to the 2016 ratification vote. For example, a member of the negotiations team explained to her that an NJEA program is used to "input" information that generates a "scatter plot" for a workable salary guide. A building representative mentioned that she had been stuck on a "bubble" for nine years and that, once she "broke through," she was fine. Gallone responded that eventual success

does not justify a continuation of the problem. A past president of HEA, who was also a negotiations team member and building representative, told Gallone, "Concerning the example you make with the salary, it's a pity you blame the union for the Board's decision to freeze your salary."

In response to emails Gallone had sent to the membership regarding salary issues, the HEA president issued an email to members offering them the opportunity to meet with HEA's executive committee, bargaining committee, and NJEA field representative Ropars to discuss their concerns. Gallone responded that she would not meet with them or discuss the issue until she consulted with an attorney of her choice. A poster contemporaneously placed on the HEA bulletin board read: "If you care about your contract, please plan to participate in ALL job actions with your fellow members. If you don't care about your contract, the HEA negotiating team will settle - and we will ALL take a financial hit (among other losses) for the current year and for ensuing years."

Finally, Gallone alleges that at an HEA meeting on June 10, 2015, a middle school French teacher was berated for questioning a planned HEA "job action" intended to apply pressure on the Board during the negotiations for the MOA. In the next workday, Gallone overheard a faculty member saying to two HEA negotiations team members, "Find out what step she is on and make sure she

only gets \$100." Gallone alleges that one team member smiled and the other laughed and agreed. Gallone told them, "After the union pushed the limit of harassment and intimidation, I can't believe I'm hearing this now." One of the team members took offense to her comments and shouted at her as she walked down the hall. She responded, "I guess we have different definitions of the words, then."

### ANALYSIS

The duty of fair representation arises from a majority representative's responsibility to represent the interest of all employees in an appropriate negotiations unit without discrimination. N.J.S.A. 34:13A-5.3. The standard for measuring a union's compliance with the duty of fair representation, first articulated in Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed. 2d 842 (1967), has been adopted in the New Jersey public sector. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976). Under Vaca, a breach of the duty of fair representation occurs only when a union's conduct towards a member of the negotiations unit is arbitrary, discriminatory, or in bad faith. A mere allegation that a union did not act in accordance with a unit member's expectations or achieve the results a member desired does not demonstrate unlawful conduct. See Bergen Community College, D.U.P. No. 2018-3, 44 NJPER 157 (¶46 2017). An unfair practice



charge alleging a violation of the duty must set forth sufficient factual allegations, not conclusionary statements, that the conduct of the majority representative is arbitrary, discriminatory or in bad faith. Springfield Tp., D.U.P. No. 79-13, 5 NJPER 15 (¶10008 1978).

In describing the duty of fair representation in the context of collective negotiations, the Court in Belen (citing Ford Motor Company v. Huffman, 345 U.S. 330), observed:

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.

Compromises on a temporary basis, with a view to long range advantages, are natural incidents of negotiation. Differences in wages, hours and conditions of employment reflect countless variables.

[Belen, 142 N.J. Super. at 491, citing Ford Motor Company, 345 U.S. at 337-38 (1953)]

We have applied this standard in our administrative determinations. In New Providence Bd. of Ed., D.U.P. No. 94-5, 19 NJPER 432 (¶24197 1993), the Director of Unfair Practices dismissed a charge alleging a breach of the duty of fair representation based on disparities in wage increases on a salary guide. The Director wrote:

The charging party's chief allegation is that the negotiated wage increase affecting her title was not commensurate with those of other unit titles. In AFT Local 481 (Jackson), P.E.R.C. No. 87-16, 12 NJPER 734 (¶17274 1986), the Commission found that a disparity in negotiated wage increases was not an unfair practice. It relied in part on its previous decision in City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). There, the Commission wrote:

. . . While a breach of the duty does not arise from mere disparities in wage increases or decreases, [citation omitted], a breach does exist when, as here, the exclusive representative makes a deliberate decision in bad faith to cause a unit member economic harm. Union City, at 8 NJPER 100.

The charging party concedes that it received at least a 4.5% increase in the successor agreement. No facts have been alleged which suggest that the Association made a "deliberate decision" causing the charging party any "economic harm." Int'l Brotherhood of Electrical Workers (DeSanti), D.U.P. No. 83-11, 9 NJPER 300 (¶14139 1983). Because some unit members did not receive the same percentage increases as other unit employees generally is not a basis upon which a complaint may issue.  
[Id., 19 NJPER at 433]

Similarly, in Shrewsbury Boro. Bd. of Ed., D.U.P. No. 89-13, 15 NJPER 208, 209 (¶20088 1989), the Director dismissed another charge related to a negotiated salary guide, writing:

There is no indication that the charging parties were deliberately singled out for unfair or disparate treatment. In fact (and although not controlling here), the Association did address the guide compression problem and the charging parties did receive a raise during the period in question. Moreover, the charge is devoid of any allegations of intentional bad faith or fraud. The mere fact that the charging parties were dissatisfied with their comparative guide placement negotiated by the Association (and ratified by the entire bargaining unit) does not establish a breach of the duty of fair representation.

In this case, HEA engaged the membership in discussions over the salary guide issue; Gallone's step received a modest wage increase;<sup>5/</sup> the MOA was ratified by an overwhelming number of members (139 votes to 8); and Gallone does not allege facts indicative of HEA bad faith or a deliberate decision to cause her economic harm. That the executed MOA did not meet NJEA published guidelines for salary guide development is not, standing alone, a breach of the duty of fair representation. HEA, like any majority representative, cannot unilaterally establish a salary guide; it must collectively negotiate with the public employer (the Board), which is not obligated to accept a

---

<sup>5/</sup> Gallone was at Step 9, MA for the 2013-2014 school year, with a salary of \$59,635. The MOA provided that the salary for Step 9, MA for the 2014-2015 year would be \$60,515.

union's (HEA's) proposals. For similar reasons, HEA cannot guarantee that successor salary guide amounts and increases shall match those of previous guides. As the facts in Gallone's charge indicate, the negotiations over the most recent MOA were contentious and HEA encouraged members to withhold stipended work in order to apply pressure to the Board. The result achieved by HEA does not appear arbitrary. Nor has Gallone alleged facts indicating bad faith in HEA negotiations over salary guide disparities.<sup>6/</sup>

Gallone was informed that HEA used an NJEA program to "input" information to generate a "scatter plot" to derive a workable salary guide. The charge acknowledges that in the past, other employees sometimes endured relatively small increases in compensation as a result of "bubble" step(s) before eventually "breaking through." These facts indicate that Gallone was not intentionally targeted or discriminated against in bad faith.

---

<sup>6/</sup> Disparities in the amount the steps increased or decreased compared to prior years were mostly disparities between the step numbers, not between the lateral placement categories of each step. In the 2015-2016 salary guide, the difference between the highest step and the third highest step for all categories was the same (\$20,265), while the difference between the third highest step and the lowest step for all categories was the same (\$7,095), except MA+45 (\$7,145), which was not Gallone's category. That is, there were essentially no disparities between Gallone and other members in different categories of her steps, further demonstrating a lack of arbitrariness or intentional targeting.

The charge acknowledges that HEA offered Gallone the opportunity to meet with the executive committee, bargaining committee, and NJEA field representative Ropars to discuss members' concerns regarding the salary guide. She refused. Other members attended that meeting, demonstrating HEA's good faith effort to explain or justify its decision-making regarding the guides.

Ropars explained to Gallone that it was not possible to make all members happy in a negotiated agreement and that HEA tried to anger as few people as possible. This notion accords with the reasonableness standard in Belen. Gallone does not allege facts indicating that HEA failed to act in "complete good faith and honesty of purpose in the exercise of its discretion." Id. at 491. To the extent Gallone alleges HEA made a "promise" to reach a settlement agreeable to all members, a breach of that promise, in light of the realities of negotiations, does not indicate a breach of its duty of fair representation. Ropars said that voting "no" on the contract was a member's option, and 8 members so elected, failing to overcome the 139 votes in favor. Belen does not require "complete satisfaction of all who are represented." Id.

Gallone's charge also alleges that HEA violated a "union member right to communicate." I infer this to be a reference to allegations in the charge that a French teacher was berated at an

HEA meeting for a question unrelated to the salary guide issue and that Gallone overheard a faculty member say to two negotiations team members, "Find out what step she is on and make sure she only gets \$100." The alleged comment was not uttered by a negotiations team member, and Gallone has not alleged that the repartee was in earnest, or that anyone was coerced in the exercise of their rights, based on the comments.<sup>7/</sup> Gallone has also not alleged that anyone actually caused a change to the salary guide in retaliation against the French teacher.

For all these reasons, I find that Gallone has not alleged facts showing that HEA breached its duty of fair representation to her or otherwise interfered with or coerced her in the exercise of rights guaranteed by Section 5.4b(1) of the Act. I dismiss that allegation.

Gallone also alleges that HEA violated 5.4b(3) and (5) of the Act. Only public employers, not individual employees, have standing to allege a 5.4b(3) violation. State of New Jersey (Juvenile Justice), D.U.P. No. 2012-8, 38 NJPER 248 (¶83 2012). No violation of 5.4b(5) will be found where the charge does not

---

<sup>7/</sup> Gallone herself immediately objected to the remarks and continued to voice salary guide concerns over the next several months. In the context of Gallone's charge, remarks directed at a member in or after the membership meeting do not indicate that HEA acted arbitrarily, discriminatorily, or in bad faith. The allegation is also untimely; the remarks were spoken more than 6 months before the charge was filed. N.J.S.A. 34:13A-5.4c.

specifically cite a Commission rule or regulation that was allegedly violated. New Jersey State PBA, D.U.P. No. 2011-4, 38 NJPER 53 (¶7 2010). Gallone, an individual employee, has not specifically cited a Commission rule or regulation that was allegedly violated. I dismiss these allegations, also.

**ORDER**

The Commission's complaint issuance standard has not been met, and I decline to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3(a). The unfair practice charge is dismissed.

/s/ Jonathan Roth  
Jonathan Roth  
Acting Director of Unfair Practices

DATED: June 5, 2018  
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3(b) within 10 days.**

**Any appeal is due by June 15, 2018.**

