

D.U.P. NO. 2023-1

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY  
OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-2020-025

TEAMSTERS LOCAL 97,

Respondent,

-and-

KALELA SIMMONS,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge filed by Kalela Simmons against Teamsters Local 97, her majority representative, and her employer, Rutgers University. The Director concludes that the Local did not violate its duty of fair representation as the facts as alleged do not show that the Local engaged in arbitrary, discriminatory or bad faith conduct in representing Simmons in her dispute with Rutgers over her schedule change. The Director concludes that Rutgers' failure to provide thirty days' notice to Simmons before changing her schedule where the contract also provides an exception for emergencies merely constitutes a potential contract violation over which the Commission does not exercise jurisdiction. Moreover, Simmons' generalized claims of harassment and unprofessional behavior by management representatives do not implicate the Commission's jurisdiction.

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Appearances:

For the Respondent, Rutgers,  
(Jenna A. Rottenberg, Associate General Counsel)

For the Respondent, Teamsters Local 97,  
Mets, Shiro and McGovern, LLC attorneys  
(Brian Manetta, of counsel)

For the Charging Party,  
(Kalela Simmons, pro se)

**REFUSAL TO ISSUE COMPLAINT**

On April 30, 2020 and May 28, 2020, Kalela Simmons (Charging Party or Simmons) filed an unfair practice charge and amended charge against her employer, Rutgers, the State University of New Jersey (Rutgers), and her majority representative, Teamsters Local 97 (Local). The charge, as amended, alleges that on or around March 24, 2020, Rutgers changed her working hours without

sufficient notice, and then on April 9, 2020, improperly disciplined her. Simmons alleges that Rutgers' actions violate section 5.4a(1)<sup>1/</sup> of the of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

Simmons also alleges that the Local violated its duty of fair representation by failing to represent her appropriately, including by engaging in a friendly interaction with an employer representative during her grievance meeting. Simmons alleges that the Local's conduct violates Sections 5.4b(1), (3), and (5)<sup>2/</sup> of the Act.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; 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.

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<sup>1/</sup> This provision prohibits public employers, their representatives or agents from "(1) Interfering with, restraining or coercing employees on the exercise of the rights guaranteed to them by this Act."

<sup>2/</sup> These provisions 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; [(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; and (5) Violating any of the rules and regulations established by the commission."]

N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

I find the following facts:

Rutgers is a public employer within the meaning of the Act. Rutgers and the Local signed a collective negotiations agreement (CNA) extending from July 1, 2018 through June 30, 2022. The negotiations unit is comprised of licensed practical nurses, clerical staff, health care and services staff and operations, maintenance and service staff employed by Rutgers. At the time of the events at issue in this charge, Simmons was employed by Rutgers as a secretary, and therefore, was a member of the Local's negotiations unit.

The parties' CNA sets forth a grievance procedure under Article 4, which contains primarily two steps. Step One of Article 4 requires that a written grievance be submitted to the Office of Labor Relations or its representative. Upon receipt of the grievance, Rutgers and the Local then conduct a Step One hearing. After a decision is rendered, those grievances contesting certain disciplines such as suspensions, may proceed under Step Two to arbitration upon the request of the Local.

Article 8, Section A(2) of the CNA addresses work hours and provides in a pertinent part:

All full-time staff shall be scheduled to work a regular shift as determined by the

University. Work shifts shall have stated starting times and end of shift times. When permanent schedule or shift changes are made, 30 calendar days' notice shall be given to the employee, except in cases of an emergency. Unless operationally necessary, shift changes for full and part-time members shall be made in reverse seniority order.

On or around August 12, 2019, Simmons was hired by Rutgers. Due to the COVID-19 pandemic, Simmons began working from home on or around March 23, 2020. The following day on or around March 24, 2020, Simmons was advised that her work hours were being changed to 11:00am through 7:00pm effective March 25, 2020. Simmons alleges in her charge that while the new schedule had been implemented by leadership in January, 2020 for the entire staff, a change in her schedule was never previously mentioned. Simmons emailed her program coordinator advising that Rutgers needed to give thirty days written notice of a schedule change. In response, Simmons received another email authorizing her to begin her new schedule on March 30, 2020, instead.

After learning that Simmons objected to the schedule change, Business Agent Burr certifies that he contacted the Director of Labor Relations, Abdel Kanan regarding the issue. As a result of the discussions, the effective date of Simmons's schedule change was delayed until April 6, 2020. Business Agent Burr certifies that he advised Simmons that she should begin working the new hours, and that he would file a grievance contesting Rutgers'

failure to provide thirty (30) days' notice to her for the schedule change, pursuant to the CNA.

On April 6, 2020, Simmons began working at her previous starting time of 8:00am rather than the new starting time of 11:00am. The next day, Simmons once again reported to work at her previous starting time.

As a result, on April 8, 2020, Simmons received a Staff Disciplinary Notice and a three (3) day suspension for insubordination. The Local provided a copy of this disciplinary notice as part of Burr's certification, which faults Simmons for failing to report to work at the new starting time of 11:00am in contradiction to instructions she had received on March 30, 2020. (Ex. B)

After receiving the disciplinary notice, Simmons emailed Business Agent Burr minutes later to advise him of the discipline. That same day, Business Agent Burr sent an email to Director of Labor Relations Kanan protesting her discipline and noting that management identified two seemingly different justifications for the schedule change. The Local provided a copy of these email communications as part of Burr's certification. (Ex. C)

The Step One hearing for Simmons's discipline was conducted on April 9 by telephone conference. Employer representatives Cherie Castellano, Jacynth Pelland, Business Agent Burr and

Simmons all dialed-in for the hearing. Simmons alleges in her charge that for "at least" two minutes, Castellano and Burr engaged in a friendly conversation about "when they first met, who they know [sic] the programs they worked on, etc."

After the call, Simmons received a phone call from Business Agent Burr, who advised her to report to work for her new hours and explained that he was trying to save her job as she could be fired. According to her own charge, Simmons informed Burr that she would not report for the new hours until April 25, 2020 because that date would mark thirty days from when she initially received written notice "and the policy states that is what [she is] to be given." Simmons claims that Burr informed her that he would file a grievance for her and contact her. She asserts that she did not hear from Burr after their April 9, 2020 phone conversation, despite reaching out to him many times.

After her three day suspension, Simmons failed to return to work as directed on April 11, 13, 14, and 15. Therefore, she received a five (5) days suspension on April 15, 2020. The Local provided a copy of this written suspension as part of Burr's certification. (Ex. D)

On June 2, 2020, Business Agent Burr filed a grievance by email contesting her two suspensions. The Local provided a copy of the emailed grievance as part of Burr's certification. (Ex. E) Burr copied on the June 2 email. In his email Burr advised

that the Local will represent Simmons at the Step 1 grievance hearing and that as with all other members of the Local, she will then have the opportunity to advocate to the Local 97 Executive Board why her grievance should proceed to arbitration.

Simmons contends that her schedule change was not due to COVID-19 and that the pandemic is merely a pretextual justification for the change. Simmons complains that an employer representative named "Cherie Castellano" is constantly engaging in harassing behavior, bullying and being professionally inappropriate. Simmons alleges in her charge that she knows that the schedule change "is coming straight from Ms. Castellano." She also contends that the union has left her without representation, and she attributes the union's conduct to Castellano's long employment history with Rutgers and her connections there. Simmons believes she is being targeted and that she felt her April 9, 2020 grievance hearing was biased against her.

The Local denies violating that Act. It contends that it represented Simmons throughout the disciplinary process and filed grievances on her behalf regarding the potential contract violations. It notes that there are no facts alleged that establish it engaged in arbitrary, discriminatory or bad faith conduct. Instead, Simmons's allegations merely reflect her



subjective belief that the representation she admittedly received was deficient or otherwise improper.

Rutgers denies violating the Act. It asserts that Simmons was repeatedly insubordinate, and was properly disciplined as a result. Rutgers notes that the CNA by its clear terms does not require it to follow the thirty day notice requirement when an emergency arises, such as the increase in call volume that occurred at New Jersey Peer Recovery Helpline call center during the start of the COVID-19 pandemic.

### **ANALYSIS**

#### ***Allegations Against the Local***

A majority representative has a duty to represent all unit employees fairly and without discrimination on the basis of union membership. N.J.S.A. 34:13A-5.7. A majority representative breaches its duty of fair representation “. . . only when [its] 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). The Commission subsequently adopted this standard, the violation of which would arise under section 5.4b(1) of the Act. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12, 13 (¶15007 1983).

A union is afforded a "wide range of reasonableness in servicing its members," and "[t]he fact that a union's decision results in a detriment to one unit member does not establish a breach of duty." Essex-Union Joint Meeting and Automatic Sales, Servicemen & Allied Workers, Local 575 (McNamara), D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991) (citing Ford Motor Co. v. Huffman, 345 U.S. 330 (1953)). There is no absolute right to grievance arbitration. Id. (citing Vaca, supra).

Moreover, the Commission has rejected duty of fair representation claims based on allegations that a union's representation was negligent, inadequate or otherwise unsatisfactory from the grievant's perspective. Passaic Cty. Comm. Coll. Admin. Ass'n (Wasilewski), P.E.R.C. No. 98-131, 24 NJPER 256 (¶29123 1998); Council of N.J. State College Locals, AFL-CIO (Roman), P.E.R.C. No. 2015-76, 42 NJPER 33 (¶8 2015); ATU Local 540 (Warfield), D.U.P. No. 2016-003, 42 NJPER 376 (¶107 2015), aff'd P.E.R.C. 2016-046, 42 NJPER 336 (¶96 2016). An employee organization must exercise reasonable care and evaluate an employee's request for arbitration on the merits and decide, in good faith, whether it believes the employee's claim has merit. See Ford Motor Company v. Huffman, 345 U.S. 330, 337-338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953); Essex-Union Joint Meeting and Automatic Sales, Servicemen & Allied Workers, Local 575 and Brian McNamara, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991); D'Arrigo

v. New Jersey State Bd. of Mediation, 119 N.J. 74 (1990); Carteret Ed. Ass'n.(Radwan), P.E.R.C. No. 97-146, 23 NJPER 390, 391 (¶28177 1997); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Trenton Bd. of Ed (Salter), P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986). A union also “. . . must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit.” OPEIU Local 133, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

The alleged facts do not establish that the Local violated its duty of fair representation under 5.4(b)1 of the Act, and therefore, this claim is dismissed. The Local's alleged failure to respond to her calls and emails for a period of time constitutes negligence at most and does not rise to the level of unlawful conduct. As noted above, it is well-settled that negligent conduct on its own does not violate a majority representative's duty of fair representation. Here, the Local advocated on Simmons's behalf to management when she notified it of the change in work hours, participated in the April 9, 2020 hearing, advised her of the potential consequences of continuing to fail to report to work at the new starting time while the contractual dispute progressed through the grievance procedure, and grieved her disciplines when she failed to report to work as

directed. These facts do not indicate that the Local engaged in arbitrary, discriminatory or bad faith conduct.

At most, the charge alleges that the representation that the Local provided did not meet Simmons's particular level of satisfaction, and therefore, she decided to disregard the advice that the Local admittedly provided to her and to engage in self-help by not reporting to work as directed. Simmons's subjective view that a friendly exchange between the Local's and Rutgers' representatives in the initial minutes of the April 9 hearing reflected bias against her cannot, without more, substitute for specific factual allegations showing arbitrary, discriminatory or bad faith conduct by the Local under the complaint-issuance standard. Although Simmons may have perceived her representation as inadequate and may have personally disagreed with the guidance the Local provided, the factual allegations in her charge do not indicate that the Local may have violated its duty of fair representation.

The charge also alleges that the Local violated 5.4(b)3 of the Act. A union's duty of good faith negotiations is owed to the employer, not individual unit members. Thus, individual employees do not have standing to assert a violation of (b)3. Council of New Jersey State College Locals, D.U.P. No. 84-8, 6 NJPER 531 (§11271 1980). Accordingly, I dismiss the b(3) allegation.

Lastly, because there are no facts alleged that demonstrate that a Commission rule or regulation has been violated, I also dismiss the b(5) allegation.

***Allegations Against Rutgers***

The alleged facts do not establish that Rutgers violated Section 5.4a(1) of the Act or any other provision. At the most, the alleged facts demonstrate a potential contract violation regarding the general thirty-days notice requirement for scheduled changes. Although Simmons believes that Rutgers' conduct was improper, this is precisely the type of dispute that the parties' contractual grievance procedures are designed to resolve and remedy, if necessary. It is well-established that the Commission will not exercise jurisdiction over allegations involving mere breaches<sup>3/</sup> of contract. State of New Jersey (Dep't of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Accordingly, the claims against Rutgers must be dismissed.

Moreover, Simmons's allegations that Castellano engaged in harassing, bullying and otherwise professionally inappropriate behavior do not set forth a cognizable claim under our Act

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<sup>3/</sup> Since the facts as alleged do not support the conclusion that the Local may have violated its duty of fair representation, Simmons as an individual also does not have standing to litigate a contract breach in an unfair practice forum. New Jersey Turnpike Authority (Jeffrey Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980).

because there are no specific factual allegations that indicate Simmons's schedule change and discipline was in retaliation for the types of activities protected under the Act. Such generalized claims of harassment have been repeatedly dismissed since they do not implicate the protections afforded under the Act. See State of New Jersey (Dept. of Treasury), D.U.P. No. 2020-1, 46 NJPER 25 (¶8 2019); State of New Jersey (Dept. of Corrections), D.U.P. No. 93-32, 19 NJPER 169 (¶24086 1993); New Jersey Transit Bus Operations, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987).

In sum, I find that the complaint issuance standard has not been met and dismiss the charge. N.J.A.C. 19:14-2.1.

**ORDER**

The unfair practice charge is dismissed.

/s/ Jonathan Roth  
Jonathan Roth  
Director of Unfair Practices

DATED: July 12, 2022  
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.**

**Any appeal is due by July 22, 2022.**