D.U.P. NO. 2024-7

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

In the Matter of

WAYNE PARAPROFESSIONALS
ASSOCIATION,

Respondent,

-and- Docket No. CI-2023-034

LORI DEE COLLUM,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge filed by Lori Dee Collum against the Wayne Paraprofessionals Association (Association). The charge alleged the Association violated N.J.S.A. 34:13A-5.4b(1) by refusing to process a grievance to arbitration over the Wayne Board of Education's discontinuance of her health insurance waiver payments. The Association contended the subject of Collum's grievance was preempted under state law. The Director found the Association did not breach its duty of fair representation to Collum in violation of section 5.4b(1). The Director also found the charge was untimely under N.J.S.A. 34:13A-5.4c.

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Appearances:

For the Respondent,
Zazzali P.C., attorneys
(Albert J. Leonardo, of counsel)

For the Charging Party
(Lori Dee Collum, pro se)

**REFUSAL TO ISSUE COMPLAINT**

On May 18, 2023, Lori Dee Collum (Collum or Charging Party) filed an unfair practice charge against the Wayne Paraprofessionals Association (Association or Respondent). Collum alleges the Association violated section 5.4b(1)[1/] of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by refusing to process a grievance to

1/ This subsection 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."

arbitration over the enforcement of a health insurance waiver payment provision.[2/]

Specifically, Collum asserts in her charge that she is entitled to a health insurance waiver payment under her collective negotiations agreement and claims the Association refuses to enforce said provision because the Association contends ". . . a state statute supersedes the CBA [agreement] and prohibits my contract from being enforced." Collum also alleges the Association has not, upon her request, provided a "citation to support" that statutory contention and claims "similarly situated employees" in her unit are receiving health insurance waiver payments under the Association's collective negotiations agreement. Finally, Collum alleges she has a "right to organize in favor of or in opposition to a proposed CBA [collective bargaining agreement] and once ratified I am entitled to protection under said CBA."[3/]

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2/ In section 5 of her charge, Collum acknowledges the Association pursued a grievance to Step 2 of the Association's collectively negotiated grievance procedure but "refused to take [her] grievance beyond Step 2."

3/ As a remedy, Collum seeks an order from the New Jersey Public Employment Relations Commission (Commission) to compel the Association to file a grievance and/or unfair practice charge enforcing the said health insurance waiver provision, or, in the alternative, to "allow me the opportunity to process this grievance to arbitration at my own expense."

On May 19, 2023, I sent a letter to Collum and the Association requesting the Association file a position statement in response to Collum's charge, and affording Collum an opportunity to file a reply to the Association's position statement. On June 6, 2023, the Association filed and served on Collum a position statement and a copy of the Association's 2021-2025 collective negotiations agreement, a sidebar agreement to that collective agreement and an email dated June 2, 2022, from Jacqueline Carola, the Association's President, to Collum and other Association unit employees.[4/] In response, Collum filed replies on June 9 and 11, 2023 and the Association filed a response to Collum's replies on June 13, 2023.

The Association contends Collum's charge is untimely and that the Association fulfilled its duty of fair representation (DFR) in negotiating a change in health insurance benefits and in processing Collum's grievance. The Association also contends that Collum's grievance is preempted by a state statute and regulation and is non-negotiable under Commission precedent.

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

4/ The email appears to have been sent to every paraprofessional in the unit at the time.

delegated that authority to me. Where the complaint issuance standard has not been met, I will decline to issue a complaint. 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.[5/]

The Association is the exclusive majority representative of "steadily employed", "full-time" paraprofessionals who "serve the Wayne School District" in the "areas of Special Education and Transportation."[6/] The Association and Wayne Board of Education (Board) are parties to a collective negotiations agreement extending from July 1, 2021 through June 30, 2025 (2025 Agreement).[7/] The Association ratified the 2025 Agreement in November 2021. Collum is a paraprofessional and an Association unit employee covered by the 2025 Agreement.

Under Article III of the 2025 Agreement, the parties agreed to a three stage grievance process. At Stage 1, a grievance by an individual employee can be presented to the employee's

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5/ The facts are gleaned from the charge and undisputed facts set forth by the Association and Collum in their June 2023 submissions.

6/ The unit does not include paraprofessionals who work less than 25 hours a week or who are "employed temporarily." (Article 1 of Association Agreement).

7/ The 2025 Agreement is included as an attachment to the Association's June 6 position statement and was served on Collum.

"immediate superior" (which can be, depending on one's job title, a Director of Special Services, Supervisor of Special Programs or a Transportation Supervisor). Stages 2 and 3 of the grievance procedure provides a grievant and/or Association the right to appeal an immediate superior's grievance determination to the Superintendent of Schools and Board. The Board level is the terminal step in the grievance process. The grievance procedure does **not** culminate in binding arbitration, but the Association did pursue a grievance on Collum's behalf to Stage 2 of the grievance procedure.[8/]

As a State employee, Collum's spouse receives health insurance through the New Jersey State Health Benefits Program (SHPB). As a dependent covered under the SHPB, Collum waived health insurance coverage through the Board under Article XF of the 2025 Agreement and for a time was receiving health insurance waiver payments.[9/] At the time Collum received waiver payments, Article XF of the 2025 Agreement provided, in pertinent part:

> Any employee who has dependent coverage through his or her spouse's employer (other than the Wayne Township Board of Education) may waive all insurance coverage from the Board and shall receive 50% of the single coverage costs up to a maximum of $5,000. Payment shall be pro-rated bi-

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8/ In section 5 of her charge, Collum acknowledges the Association pursued a grievance to Step 2 of the Association's grievance procedure but "refused to take [her] grievance beyond Step 2."

9/ June 6 Position Statement - p.2.

> monthly and will be added to the employee's payroll check.

At the time Collum received bi-monthly waiver payments, the Board provided health insurance to Association unit employees through Aetna, a private insurance carrier.[10/]

On May 13, 2022, Jackie Carola, President of the Association, signed a side-bar agreement on behalf of the Association with the Board to change several provisions on health insurance coverage and insurance waiver payments.[11/] Pertinent to this dispute, the Board and Association agreed to switch insurance carriers from Aetna to the New Jersey School Employees Health Benefits Program (SEHBP).[12/] Article XF was also modified by the side-bar agreement to read as follows:

> Employees with a spouse whose employer is also enrolled in the SEHBP either in this school district or any other public employer in New Jersey shall not be eligible for the waiver and/or coverage separately for married spouses, as long as the Wayne Board of Education remains enrolled in the SEHBP.[13/]

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10/ June 6 Position Statement - p.2.

11/ Exhibit B to June 6 Position Statement. In her June 11 response, Collum contends Carola did not have authority under the Association's by-laws and constitution to enter into this side-bar agreement. That argument will be addressed in the "Analysis" section of this decision.

12/ Exhibit B to June 6 Position Statement.

13/ Exhibit B to June 6 Position Statement.

These changes in coverage and waiver payments went into effect on July 1, 2022 and Collum's waiver payments were discontinued in September 2022.[14/] According to the Association, the side-bar agreement was entered into to "make the best deal it could" in "the best interests of its members, collectively."[15/] On June 3, 2022, Carola emailed Collum and other unit employees a copy of the side-bar agreement signed by Carola.[16/]

On an unspecified date, the Association retained legal counsel to provide Collum with a legal opinion as to why her waiver payments were discontinued.[17/] Association counsel sent Collum an opinion letter about the cessation of her waiver payments that reads as follows:

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14/ June 6 Position Statement, p.2. The Association explains that "because waiver incentive payments are not made over the summer, September 2022 was the first month that Collum did not receive the waiver incentive payment." June 6 Position Statement, footnote 1.

15/ June 6 Position Statement, p. 8.

16/ In her June 9 response, Collum does not dispute the email with the side-bar agreement was sent to her and other unit employees on June 3, 2022, but maintains the side-bar agreement "...did not come to my attention until presented" by the Association with its June 6 position statement.

17/ The charge and Collum's June 9 and 11 responses do not provide a date as to when she first learned of the Association's position about her eligibility for insurance waiver payments under the side-bar agreement and modified 2025 Agreement. Collum does acknowledge in her June 9 response that she has "pursued this contract violation" over "the last 8 months" (or at least since November 2022).

Hello Lori,

As we discussed, below is the language of the New Jersey statute[18/] which supersedes your collective bargaining agreement

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18/ The statute referenced in the opinion letter reads, in pertinent part:

> b. Notwithstanding the provisions of any other law to the contrary, the State as an employer, or an employer that is an independent authority, commission, board, or instrumentality of the State which participates in the State Health Benefits Program, may allow any employee who is eligible for other health care coverage **that is not under the State Health Benefits Program** to waive the coverage under the State Health Benefits Program to which the employee is entitled by virtue of employment with the employer. The waiver shall be in such form as the Director of the Division of Pensions and Benefits shall prescribe and shall be filled with the division.
>
> c. In consideration of filing a waiver as permitted in subsections a. and b. of this section, an employer may pay to the employee annually an amount, to be established in the sole discretion of the employer, which shall not exceed 50% of the amount saved by the employer because of the employee's waiver of coverage, and, for a waiver filed on or after the effective date of P.L.2010, c.2, which shall not exceed 25%, or $5,000, whichever is less, of the amount saved by the employer because of the employee's waiver of coverage. An employee who waives coverage shall be permitted to immediately resume coverage if the employee ceases to be eligible for other health care coverage for any reason, including, but not limited to, the retirement or death of the spouse or divorce. An employee who resumes coverage shall repay, on a pro rata basis, any amount received from the employer which represents

(continued...)

> health insurance waiver language for so long as the district is covered under the School Employee Health Benefits Program. If the district moves to a private plan, then your collective bargaining agreement language governing waiver payments would come back into operation and you would be entitled to the waiver payment if you waive coverage. (I tried to get the statute to come up as a word document or a pdf, but I was having some technical difficulty so I am reprinting the text below). The important text is in paragraph c below.
>
> I am copying Lori Cintron on this email so that she can provide some documentation regarding the district's change from a private plan to the SEHBP as of July 1, 2022. Lori Cintron, since Lori Collum does not receive benefits from the district she was not even aware that the district was changing coverage as of July 1, 2022. Obviously, this change affected Lori Collum greatly from a financial perspective. We want to confirm that indeed the district moved from a private plan to the SEHBP as of 7/1/22 so we can confirm the applicability of the waiver statute attached.

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18/ (...continued)

> an advance payment for a period of time during which coverage is resumed. An employee who wishes to resume coverage shall notify the employer in writing and file a declaration with the division, in such form as the director of the division shall prescribe, that the waiver is revoked. The decision of an employer to allow its employees to waive coverage and the amount of consideration to be paid therefor shall not be subject to the collective bargaining process
>
> [N.J.S.A. 52:14-17.31a, emphasis added]

> How can Lori Collum keep apprised of changes to the district's health insurance carrier when she does not receive the coverage? Obviously, she will want to be sure, if the district moves to a private plan in the future, that she receives the waiver payment to which she may be entitled in that event.[19/]

Following up on the opinion letter, Lori Cintron, the Association's New Jersey Education Association's (NJEA) Uniserv Representative, emailed Collum an additional legal explanation for why her insurance waiver payments were discontinued. In the email, Cintron wrote, in pertinent part:

> Attached you will find a Q & A from the NJ Division of Consumer Affairs that was developed when the law went into effect. Please look at Sections C and D on pages 7-8. That is where it talks about Multiple Coverage Restrictions under State Health Benefits/School Employee Health Benefits.
>
> We are providing you with information that we have based off the law and guidelines set forth by the state. I understand your frustration and hope that this information clarifies the situation for you.[20/]

On February 14 and 22, 2023, Collum filed an unfair practice charge and amended charge (docket no. CI-2023-023) against the Board. The Association was **not** named as a Respondent to the charge. The charge, as amended, alleged the Board violated the Act by discontinuing her health insurance waiver payments

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19/ Collum's June 9 response.

20/ Id.

effective September 2022. As pled in her February 14th charge, Collum asserted:

> I am informed by my union and my employer that the School District is prohibited by law from reimbursing me my share of the premium savings however neither the employer nor the union can produce any statute that comports with their assertion. This ongoing violation commenced in September of 2022 and has continued with each pay period since.

The charge was ultimately dismissed as deficient on March 21, 2023. Approximately 2 months after this charge was dismissed, the instant charge was filed on May 18, 2023 against the Association.

**ANALYSIS**

I am dismissing Collum's charge for three principal reasons:

(1) The charge is untimely under the Act's statute of limitations;

(2) Even if the charge were timely, the Association did not breach its duty of fair representation to Collum in entering into the side-bar agreement in question and refusing to process Collum's grievance beyond Step 2 of the grievance procedure; and

(3) Collum's challenge to the Association's procedure for entering into the side-bar agreement under the Association's constitution and by-laws is an intra-union dispute the Commission lacks jurisdiction to adjudicate.

**Statute of Limitations**

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

> [no] complaint shall issue based on 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-month period shall be computed from the day he [or she] was no longer so prevented.

N.J.S.A. 34:13A-5.4c; see also Newark School District and Newark Teachers Union (Gillespie), D.U.P. No. 2014-3, 40 NJPER 205 (¶79 2013), aff'd at P.E.R.C. No. 2014-61, 40 NJPER 440 (¶151 2014). The accrual date for the 6-month statute of limitations is when a charging party knew *or should have known* the basis for filing an unfair practice charge. United Brotherhood of Carpenters (Sims), P.E.R.C. No. 2023-20, 49 NJPER 299 (¶70 2022).

In determining whether a party was "prevented" from filing an earlier charge, the Commission conscientiously considers the circumstances of each case and assesses the Legislature's objectives in prescribing the time limits as to a particular claim. The word "prevent" ordinarily connotes factors beyond a complainant's control disabling him or her from filing a timely charge, but it includes all relevant considerations bearing upon the fairness of imposing the statute of limitations. Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1978) (case transferred to Commission where employee filed court action within six months of alleged unfair practice). Relevant

considerations include whether a charging party sought timely relief in another forum; whether the respondent fraudulently concealed and misrepresented the facts establishing an unfair practice; when a charging party knew or should have known the basis for its claim; and how long a time has passed between the contested action and the charge. Sussex Cty. Com. Col., P.E.R.C. No. 2009-55, 35 NJPER 131 (¶46 2009); State of New Jersey, P.E.R.C. No. 2003-56, 29 NJPER 93 (¶26 2003).

To satisfy the Act's statute of limitations, a charging party must allege specific facts in a "clear and concise statement" establishing an event giving rise to an unfair practice occurred within 6 months of filing a charge. N.J.A.C. 19:14-1.3(a)(3); Certified Shorthand Reporters Association (Yuhasz), D.U.P. No. 2000-12, 26 NJPER 159,160 (¶31061 2000); Passaic Cty. Vocational Bd. of Ed. (Moore), D.U.P. No. 2001-15, 27 NJPER 256 (¶32091 2001).[21/] As a former Director of Unfair Practices explained in dismissing a charge as untimely under this standard:

> First, many of the allegations contained in the charge do not specify dates when the alleged events occurred. N.J.A.C. 19:14-1.3(a) requires that a charge contain:

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21/ See also Dennis Tp. Bd. of Ed., D.U.P. No. 93-16, 19 NJPER 34 (¶24016 1992) (Dismissal of charge failing to allege specific date a shop steward allegedly met with and threatened charging party about pursuing a grievance).

> 3. 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. [emphasis added]
>
> The Commission is precluded from issuing a complaint concerning any allegation not occurring within six months prior to the filing of the charge. N.J.S.A. 34:13A-5.4(c). Without specific dates set forth in the charge as to events alleged, we can not issue a complaint.
>
> [26 NJPER at 160]

And in applying the pleading standards under N.J.A.C. 19:14-1.3(a)(3), the Commission has found that a charging party must plead with specificity the "who, what, when, where and how" information about the commission of an unfair practice in order to afford the Respondent adequate notice of the legal and factual claims against it. Town of Westfield, P.E.R.C. No. 90-32, 15 NJPER 618 (¶20257 1989); Edison Tp., D.U.P. No. 2012-9, 38 NJPER 269 (¶92 2012), aff'd P.E.R.C. No. 2013-84, 40 NJPER 35 (¶14 2013); Warren Cty. College, P.E.R.C. No. 2018-25, 44 NJPER 287 (¶80 2017); State of New Jersey (Judiciary), D.U.P. No. 2022-8, 48 NJPER 344 (¶77 2022).

Here, Collum's charge is untimely because it was filed more than six (6) months after she knew or should have known the Association negotiated the discontinuance of her health insurance

waiver payments. On May 13, 2022, Association President Carola signed a side-bar agreement with the Board providing clear contractual language prohibiting health insurance waiver payments to unit employees receiving insurance coverage under a spouse's state health benefits plan with "this school district **or any other public employer in New Jersey.**"[22/] Afterwards, Carola emailed a copy of this side-bar agreement to Collum and other unit employees on June 3, 2022: more than eleven months prior to the filing of the instant charge on May 18, 2023. Upon receipt of that side-bar agreement, Collum knew *or should have known* that the Association was adopting a position foreclosing waiver payments to unit employees such as Collum (i.e. employees receiving insurance through their spouse under a state health benefits plan).[23/]

Even assuming the June 3, 2022 date is not the accrual date for the statute of limitations on her charge, Collum acknowledges

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22/ Exhibit B to June 6 Position Statement (emphasis added).

23/ Collum acknowledges receiving Carola's June 3, 2022 email and side-bar agreement, but contends she did not actually know about the agreement until the same was provided to her with the Association's June 6, 2023 position statement. However, the accrual date for the six month statute of limitations is when she knew *or should have known* the Association was agreeing to discontinue her waiver payments. United Brotherhood of Carpenters, 49 NJPER 299. Here, given her receipt of the side-bar agreement prohibiting her from receiving waiver payments more than 11 months prior to the filing of the instant charge, I find Collum should have known of her duty of fair representation claim against the Association at that time and was not prevented from filing the same against the Association within 6 months of receiving the side-bar agreement.

being aware of the discontinuance of her waiver payments and the Association's change to her contractual right to the same more than six (6) months prior to the filing of the instant charge. In her previous charge against the Board filed on February 14, 2023 (in which the Association was not named as a Respondent), Collum acknowledges she no longer received waiver payments beginning in September 2022 (approximately eight (8) months prior to her filing the instant charge). In her June 9, 2023 response to the Association's June 6 position statement, Collum acknowledges she "pursued this contract violation" concerning waiver payments "over the last 8 months" or at least since November 2022. In both instances, Collum's awareness of the contractual modification resulting in the discontinuance of her waiver payments stem from the same source: the May 13, 2022 side-bar agreement she received on June 3, 2022. And that expressed awareness of this issue and the absence of any factual allegations indicating she was prevented from filing a timely charge against the Association also justify a finding that her charge is untimely.

Independent of *when* the statute of limitations accrues on her charge, Collum's charge should also be dismissed because it does not plead with sufficient specificity the date(s) of an event giving rise to her section 5.4b(1) claim within 6 months of filing

her charge.[24/] Certified Shorthand Reporters Association (Yuhasz), 26 NJPER at 160; Passaic Cty. Vocational Bd. of Ed. (Moore), 27 NJPER 256. The charge does not specify *who* on behalf of the Association did *what* to violate section 5.4b(1) within 6 months of filing her charge. As such, the charge fails to satisfy our statute of limitations and pleading standards. Passaic Cty. Vocational Bd. of Ed. (Moore); Edison Tp.; State of New Jersey (Judiciary).

**Duty of Fair Representation**

Assuming Collum's charge is timely, the charge should be dismissed because the Association did not breach its duty of fair

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24/ Quoting the language of Section 5.4b(1), Collum does plead in her charge that the Association "allowed my employer to violate my collective bargaining agreement and has been interfering with and restraining my attempt at enforcement of that agreement since January 25, 2023." This conclusory allegation, however, does not satisfy our pleading standards for specifying "who" on behalf of the Association did "what" and "when" to interfere with her ability to enforce Article XF of the Agreement (i.e., the health insurance waiver provision). Town of Westfield, P.E.R.C. No. 90-32, 15 NJPER 618 (¶20257 1989); Edison Tp., D.U.P. No. 2012-9, 38 NJPER 269 (¶92 2012), aff'd P.E.R.C. No. 2013-84, 40 NJPER 35 (¶14 2013); Warren Cty. College, P.E.R.C. No. 2018-25, 44 NJPER 287 (¶80 2017); State of New Jersey (Judiciary), D.U.P. No. 2022-8, 48 NJPER 344 (¶77 2022). Moreover, there are no alleged facts specifying what agent on behalf of the Association did what on January 25,2023 to "interfere" with the enforcement of the health insurance waiver provision of the 2025 Agreement. As such, the charge does not satisfy the Act's statute of limitations and Commission pleading standards. N.J.A.C. 19:14-1.3(a); Certified Shorthand Reporters Association (Yuhasz), 26 NJPER at 160; Passaic Cty. Vocational Bd. of Ed. (Moore), 27 NJPER 256; Dennis Tp. Bd. of Ed., 19 NJPER 34.

representation (DFR) to Collum in its negotiations of the side-bar agreement in question and its refusal to process Collum's grievance (beyond Step 2) over the Board's discontinuance of her waiver payments.

A majority representative breaches its duty of fair representation (DFR) only when its conduct towards a unit employee is arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. 171, 190 (1967); Hines v. Anchor Motor Freight, 424 U.S. 554, 91 LRRM 2481 (1976). Our Supreme Court and Commission have consistently applied this standard to DFR claims. See, e.g., Saginario v. Attorney General, 87 N.J. 480 (1981); In re Bd. of Chosen Freeholders of Middlesex Cty., P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (4/1/82), pet. for certif. den. 6/16/82); see also Council of N.J. State College Locals (Roman), D.U.P. No. 2015-10, 41 NJPER 497 (¶154 2015), aff'd P.E.R.C. No. 2015-76, 42 NJPER 33 (¶8 2015).

A majority representative 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 the duty [of fair representation]." Essex-Union Joint Meeting and Automatic Sales, Servicemen & Allied Workers, Local 575 (McNamara), D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991); Rutgers (Spinnato), D.U.P. No. 2020-8, 46 NJPER 308 (¶75 2020), aff'd P.E.R.C. No. 2020-44, 46 NJPER 442 (¶98 2020),

aff'd 49 NJPER 195 (¶46 App. Div. 2022). The Commission has frequently rejected duty of fair representation claims based on allegations that a majority representative'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); Rutgers (Spinnato).

In the context of a majority representative's handling of unit member grievances, the courts and Commission have held 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.[25/] Middlesex Cty. (Mackaronis); CWA Local 1034 (King); Belen

25/ Collum alleges "similarly situated employees" are receiving health insurance waiver payments, but does not plead with specificity *who* is receiving these payments, *what* level of benefits these "similarly situated employee" do receive, and *when* or over what period of time those waiver payments were received. As such, this allegation does not satisfy our pleading standards and should be dismissed. N.J.A.C. 19:14-1.3(a); Town of Westfield, P.E.R.C. No. 90-32, 15 NJPER 618 (¶20257 1989); Edison Tp., D.U.P. No. 2012-9, 38 NJPER 269 (¶92 2012), aff'd P.E.R.C. No. 2013-84, 40 NJPER 35 (¶14 (continued...)

v. Woodbridge Bd of Ed., 142 N.J.Super. 486 (App. Div. 1976); AFSCME Council No. 1 (Banks), P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). However, a union's negligence in the processing and presentation of a grievance is not a DFR breach. Newark Library and IUOE Local 68 (Shaw), D.U.P. No. 2005-6, 30 NJPER 494 (¶168 2004); Monmouth Cty. and CWA Local 1034 (White), D.U.P. No. 2011-5, 36 NJPER 393 (¶153 2010). We have frequently rejected DFR claims based on allegations that a union's representation of a grievant was inadequate or incompetent. Passaic Cty. Comm. Coll. Admin. Ass'n (Wasilewski), P.E.R.C. No. 98-131, 24 NJPER 256 (¶29122 1998); Council of N.J. State College Locals, AFL-CIO (Roman), D.U.P. No. 2015-10, 41 NJPER 497 (¶154 2015), aff'd P.E.R.C. No. 2015-76, 42 NJPER 33 (¶8 2015); Monmouth Cty. and CWA Local 1034 (White).

Moreover, a majority representative is not obligated to process a non-meritorious grievance and a disagreement between a grievant and a majority representative about the legal merits of a grievance is not, by itself, a breach of the DFR standard. Rutgers (Spinnato); State of New Jersey (Corrections), H.E. No. 2003-20, 29 NJPER 263 (¶77 2003)(final decision). That is true even if a majority representative is mistaken in its understanding of the law

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25/ (...continued)
2013); Warren Cty. College, P.E.R.C. No. 2018-25, 44 NJPER 287 (¶80 2017); State of New Jersey (Judiciary), D.U.P. No. 2022-8, 48 NJPER 344 (¶77 2022).

governing a grievance. Id. Thus, in State of New Jersey (Corrections), a Hearing Examiner rejected a claim by a unit employee against his majority representative for breaching the DFR when the majority represenative concluded that a inter-governmental transfer program (IGTP) between Union County and State corrections officers preempted negotiations over salary guide placement of the transferees. The unit employee contended transferees from Union County could not be placed at a higher salary guide step under IGTF than a state corrections officer with the same level of correctional experience. As the Hearing Examiner explained:

> Even if the PBA [majority representative] was mistaken about the preemptive effect of the IGTP or the meaning of the contract, its error would still not violate its duty of fair presentation. A union is not obligated to guess correctly about the effect of specific legislation or how an arbitrator may interpret its contract. It is only expected to avoid making such determinations in an arbitrary or discriminatory manner.
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> [29 NJPER at 270]

In the context of collective negotiations, "the mere fact that a negotiated agreement results . . . in a detriment to one [or more] employees does not establish a breach of the duty [DFR] by [a] union." Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J.Super. 486, 491. As the United States Supreme Court expressed in Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953);

> 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.

See also Springfield Tp., D.U.P. No. 79-13, 5 NJPER 15, 16-17 (¶10008 1978); Middlesex Cty., P.E.R.C. No. 81-62, 6 NJPER 555,557 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. denied 91 N.J. 242 (1982)(Citing the Springfield Tp. decision with approval); Hopatcong Education Association, D.U.P. No. 2018-11, 44 NJPER 471, 473 (¶131 2018).

Here, the undisputed facts alleged and presented by the parties do not support the contention that the Association acted in an arbitrary, discriminatory or bad faith manner in negotiating the side-bar agreement and in deciding not to pursue Collum's grievance beyond Step 2 of the 2025 Agreement's grievance procedure. In negotiating the side-bar agreement, the Association was attempting to secure a health benefits plans (i.e. SEHBP) that would serve the best interests of the Association's unit as a whole. While the change to the SEHBP resulted in the discontinuance of Collum's

insurance waiver payments, that detriment to Collum, alone, does not establish a DFR claim against the Association.[26/]

The Association also did not breach its DFR to Collum in its processing and response to Collum's grievance. In refusing to process Collum's grievance beyond step 2 of the 2025 Agreement's grievance procedure[27/], the Association retained legal counsel and enlisted a NJEA Uniserv representative to provide non-arbitrary, thoughtful legal opinions to support their position that the subject matter of Collum's grievance was preempted under state law. The Association relied on colorable interpretations of a New Jersey statute, regulation, Commission precedent and guidance materials from state agencies in support of their preemption position.[28/] While Collum disagrees with the Association's legal analysis of her

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26/ Springfield Tp., D.U.P. No. 79-13, 5 NJPER 15, 16-17 (¶10008 1978); Middlesex Cty., P.E.R.C. No. 81-62, 6 NJPER 555,557 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. denied 91 N.J. 242 (1982)(Citing the Springfield Tp. decision with approval); Hopatcong Education Association, D.U.P. No. 2018-11, 44 NJPER 471, 473 (¶131 2018).

27/ Collum seeks to arbitrate her grievance. However, the Association could not seek arbitration of her grievance because the 2025 Agreement's grievance procedure does not provide for arbitration (its terminal step being a Board level determination). The Association is bound by that grievance procedure and thus could not arbitrate Collum's grievance even if it wanted to do so. State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Moreover, even if the grievance procedure provided for arbitration, only the *Association* "has the authority to invoke arbitration procedures" under a collective negotiations agreement. N.J.S.A. 34:13A-62.

28/ See Association's June 6 and 13 position statements.

grievance, that disagreement alone (even if the Association is mistaken) does not establish a DFR claim. Rutgers (Spinnato); State of New Jersey (Corrections), 29 NJPER 263.

For this additional reason, Collum's charge is dismissed.

**Intra-Union Disputes**

Finally, Collum contends Association President Carola violated several Association constitutional provisions and by-laws in entering into a side-bar agreement without Association membership ratification.[29/] The Association disagrees, contending Carola had the authority to enter into the side-bar agreement under the Association's constitution and by-laws and a ratification vote was not required under the side-bar agreement.[30/] The Commission does ". . . not have the power to enforce union constitutions and by-laws." State of New Jersey PBA (Rinaldo), P.E.R.C. No. 2011-83, 38 NJPER 56, 57 (¶8 2011). While union constitutions/by-laws "may establish judicially enforceable contractual rights", a violation of their provisions "does not generally constitute an unfair practice." Id.

29/ Collum's June 11 response.

30/ Association's June 13 position statement.

**ORDER**

The unfair practice charge is dismissed.

/s/Ryan M. Ottavio
Ryan M. Ottavio
Director of Unfair Practices

DATED: September 13, 2023
Trenton, New Jersey

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

**Any appeal is due by September 25, 2023.**