

D.U.P. NO. 93-6

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

In the Matters of

OPEIU LOCAL 153,

Respondent,

-and-

Docket No. CI-92-28

RUTH B. WASILEWSKI,

Charging Party.

PASSAIC COUNTY COMMUNITY COLLEGE,

Respondent,

-and-

Docket No. CI-92-34

RUTH B. WASILEWSKI,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint and dismisses charges filed against the Passaic County Community College and the Passaic County College Administrators Association, OPEIU Local 153, by Ruth B. Wasilewski. The Director finds that the allegations against the College do not amount to unfair practices within the meaning of the Act because Wasilewski had not engaged in protected activity, because she did not have standing to bring certain of the allegations and because one of the allegations was untimely. The Director also finds that the OPEIU's decision not to pursue an appeal of Wasilewski's termination was not a violation of its duty of fair representation.

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Appearances:

For the Respondent, OPEIU, Local 153,
Schneider, Cohen, Solomon, Leder & Montalbano, attorneys
(Bruce D. Leder, of counsel)

For the Respondent, Passaic County Community College
William J. DeMarco, attorney

For the Charging Party,
Ruth B. Wasilewski, pro se

REFUSAL TO ISSUE COMPLAINT

On November 21, 1991; January 21, 1992, and July 24, 1992
Ruth Wasilewski filed an Unfair Practice Charges and amended charges
with the Public Employment Relations Commission against Passaic
County Community College alleging that the College violated the New

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Wasilewski alleged that the College improperly discharged her, discriminated against her in employment conditions, interfered with the performance of her job, denied her certain contract benefits and refused to negotiate with her, in violation of subsections 5.4(a)(1), (2), (3), (4), (5) and (7) of the Act.^{1/}

On November 7, 1991; January 6, 1992, May 27, 1992 and July 14, 1992 Wasilewski filed Unfair Practice Charges and amended charges with the Commission against the Passaic County College Administrators Association, OPEIU, Local 153, alleging that the Association failed to represent her in grievances and grievance

^{1/} 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

appeals against the College and thereby violated subsections 5.4(b)(1), (2), (3), and (5) of the Act.^{2/}

On June 2, 1992 we wrote to the parties, indicating our intention with regard to the charges; Wasilewski responded by filing additional amendments. OPEIU Local 153 did not respond. Passaic County College responded, generally denying the charges.

N.J.S.A. 34:13A-5.4(c) provides that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{3/} The Commission has delegated its authority to issue complaints to me. N.J.A.C. 19:14-2.1 provides that a complaint shall issue if it appears that the charging party's

^{2/} 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (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."

^{3/} N.J.S.A. 34:13A-5.4(c) provides: "The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice...Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof..."

allegations, if true, may constitute unfair practices within the meaning of the Act. If this standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3

For the reasons stated below, I find that the Commission's complaint issuance standard has not been met in these matters and dismiss these charges.

Wasilewski alleges that the College improperly discharged her, interfered with the performance of her job, and discriminated against her with regard to employment conditions because of her age^{4/} and the fact that she is the only U.S. citizen in her department. However, Wasilewski did not allege that she exercised rights protected by the Act, i.e., engaged in collective negotiations activities such as filing grievances or giving testimony under the Act.

Wasilewski also alleges that the College refused to negotiate with her. However, the College is obligated to negotiate only with the certified majority representative and not with individuals. Thus, Wasilewski does not have standing to bring such an action. Hoboken Bd. of Ed., P.E.R.C. No. 80-36, 5 NJPER 410 (¶10213 1979).

Wasilewski also alleges that her employer breached its contract with OPEIU Local 153 when it failed to provide her with certain benefits. Only the majority representative, which

^{4/} Wasilewski has apparently filed a complaint with the State Division of Civil Rights.

negotiates and administers the contract, to whom these rights and obligations flow, can bring an unfair practice charge alleging the repudiation of a contract. Rutgers, P.E.R.C. No. 88-130, 14 NJPER 414 (¶19166 1988); Atlantic City, D.U.P. No. 88-6, 13 NJPER 804 (¶18308 1987); Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986).

On May 27, 1992, Wasilewski filed an amendment alleging she attempted to file a grievance in July 1990, but was prevented from doing so. This allegation is untimely. The Act requires that all unfair practice charges must be filed within six (6) months of the alleged unfair practice event, otherwise no complaint may issue. No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977); N.J. Turnpike Employees Union, Local 194, IFPTE, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

Although Wasilewski alleges violations of subsections 5.4(a)(2) and (7) of the Act, no facts are presented which indicate violations of these subsections.

Accordingly, I find that the allegations against the College do not rise to the level of unfair practices within the meaning of the Act.

Wasilewski further charges that the Association failed to represent her in the grievance process and that the Association did not respond to her requests for assistance.

A breach of the duty of fair representation occurs only when a union's conduct toward a unit member is "arbitrary,

discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171 (1967). The Courts and the Commission have consistently embraced the standards set forth in Vaca. A union may investigate the merits of a grievance and decline to process that grievance if the grievant's interpretation of the contract is contrary to the union's understanding of the contract or the general interest of the negotiations unit as a whole. Jersey City Medical Center, P.E.R.C. No. 88-6, 15 NJPER 640 (¶18240 1987); N.J. Turnpike Employees Union, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); CWA Local 1082, D.U.P. No. 91-6, 11 NJPER 497 (¶21218 1990).

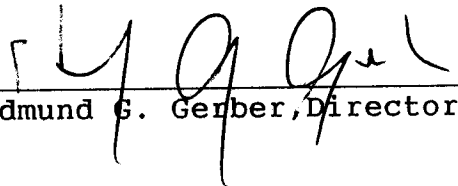
Here, Wasilewski's own allegations indicate that the Association has not violated its duty of fair representation. She refers to a letter from the Association's attorney which indicates that the Association investigated, reviewed and considered the merits of her case before making a decision on her request for assistance. Other facts demonstrate that the Association requested both information and an appeal hearing on Wasilewski's behalf (letter of June 12, 1991 from J. Heffernan and letter of September 26, 1991 from W. Mack). In response to our letter stating we intended to dismiss her charge, Wasilewski alleged that the union representative did not appear at an appeal hearing before the Board of Trustees and although the union told her they intended to pursue an appeal of her termination. Wasilewski also charges that there was no 3rd step hearing. The determination not to pursue an appeal of disciplinary action falls within the standard outlined above, and

in the circumstances here, I find this decision by the Association does not violate the Act.

In addition to Wasilewski's charge alleging a violation of subsection 5.4(b)(1) of the Act, she has also alleged violation of subsection 5.4(b)(2) and (3); however, she has not alleged facts which substantiate these allegations.

Based upon the foregoing, I find that the Commission's complaint issuance standard has not been met decline to issue a complaint on the allegations of this charge. The charges against both respondents are dismissed in their entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 19, 1992
Trenton, New Jersey