

D.U.P. NO. 2001-11

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

In the Matter of

PASSAIC COUNTY VOCATIONAL/TECHNICAL
MAINTENANCE & CUSTODIAL ASSOCIATION,

Respondent,

-and-

Docket No. CI-98-75

SANDRA DEE MOORE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an employee's claims that her majority representative violated its duty of fair representation by failing or refusing to represent her interests in various matters between September 1996 and April 1998. Claims based on alleged misconduct occurring before October 2, 1997 were dismissed as untimely. Claims based on alleged misconduct occurring after October 2, 1997 were dismissed for failing to state a violation of the duty of fair representation.

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Appearances:

For the Respondent,
Oxfeld Cohen, attorneys
(Nancy I. Oxfeld, of counsel)

For the Charging Party,
Sandra Dee Moore, pro se

REFUSAL TO ISSUE COMPLAINT

On April 2, April 27 and June 18, 1998, Sandra Dee Moore, an employee of the Passaic County Technical Institute Board of Education (Board or Employer), filed an unfair practice charge and amended charges with the Public Employment Relations Commission (Commission) against her majority representative, the Passaic County Vocational Technical Maintenance and Custodial Association, New Jersey Education Association (Association). Moore charges that the Association violated 5.4b(1), (2), (3), (4) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

(Act)^{1/} by failing or refusing to represent her in various matters between September 28, 1996 and April 1998. Moore contends the following:

1. Association representatives knew that individuals lied while under oath at a December 1997 arbitration hearing but failed to take any action against them to expose the lies.

2. Association representatives knew that documents were placed in her personnel file which should not be there but did not act to have them removed.

3. The Association refused to assist her in seeking reinstatement to bus driving duties.

4. The Association failed to represent her concerning race discrimination and sexual harassment complaints.

5. The Association acted collusively with the Board in all of the foregoing instances.^{2/}

^{1/} These provisions prohibit public 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; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement; and, (5) Violating any of the rules and regulations established by the commission."

^{2/} Moore has not filed an unfair practice charge against the Board nor has she presented any factual examples of collusive conduct by either the Board or the Association.

On June 3, August 5 and August 13, 1998, the Association filed position statements and supporting documents. The Association denies Moore's allegations and argues that they do not constitute unfair practices under the Act. The Association's submissions include an arbitration award dated January 24, 1998; a decision by New Jersey Department of Labor, Office of Public Employees' Safety (NJDOL), dated June 22, 1998; Moore's appeal of NJDOL's decision, dated July 3, 1998, and NJDOL's transfer of that appeal to the Office of Administrative Law. On August 16, 1998, Moore submitted replies to all of the Association's submissions.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice or practices 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. N.J.A.C. 19:14-2.3. In correspondence dated November 29, 2000, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. The parties were invited to respond. Neither party filed a response. Based on the following facts, I find that the complaint issuance standard has not been met.

Moore was hired by the Board on November 1, 1994, as a bus driver/custodian. Her work consisted of transporting students by bus and performing various custodial duties. During the summer of

1996, the Board learned that Moore's commercial driver's license had been suspended by the New Jersey State Division of Motor Vehicles (DMV) for the period January to June 1996. On October 23, 1996, the Board relieved Moore of her bus driving duties and reassigned her to perform custodial duties exclusively. The Board advised her that it would consider returning her to bus driving duties after one year.

Moore claims the driving duties were taken from her because she was unfairly accused of refusing to do work assigned to her in late September 1996. Moore accepted a Saturday work assignment which involved transporting people to and from athletic facilities. While on her lunch break, at about 2:20 p.m., she was asked to perform custodial duties during the time she was not driving. She did not do the custodial work and was either sent home or left on her own. The supervisor replaced her for the driving work by calling in another employee on an emergency basis. Moore was accused of refusing to perform the custodial assignment. She responded that she had injured her leg earlier in the week and that the custodial work requested was more than she could perform. She contends she performed the driving assignment because it was something she could do without much strain on the injured leg.

Following the Saturday work incident she received a letter stating that she refused to perform custodial duties, clocked out, and left work without authorization. She advised Association President Ken Krattiger, who suggested that they both attend a meeting October 3, 1996. It is unclear who that meeting was with,

but it included Business Administrator Richard Giglio. Moore was represented by Krattiger and had an opportunity to explain her version of the Saturday work incident.

Moore contends that at some point during the October 3, 1996 meeting Giglio made racial slurs/statements about her in Krattiger's presence. Following the meeting, Moore wanted to put her side of the story in writing and wanted to take action against Giglio for his statement. Krattiger advised against both. Moore then asked Krattiger to contact Association Representative Charlie Tucker but Krattiger advised against speaking to him.

On October 23, 1996, Moore was relieved of her driving duties. She again requested Krattiger to contact Tucker, he refused, and she contacted Tucker directly. Tucker advised her that the Association could not grieve the matter because the Board had the contractual right to change her position and shift.

Moore was not disciplined for refusing the September custodial assignment, but a performance evaluation on October 30 was less positive than previous evaluations. It contained admonishing comments regarding the incident and advised her of the need for improvement in job interest, initiative, cooperation and acceptance of criticism as well as the need for professional growth.^{3/}

On November 7, 1996, Moore's work hours, 12:00 p.m. to 8:00 p.m., were changed to 3:30 p.m. to 11:30 p.m.

^{3/} In February 1997, Moore received a "satisfactory" work evaluation from her supervisor, Eddie Torres.

From March 6, 1997 to March 16, 1997, Moore was on sick leave. She submitted a note from her physician stating her condition was diagnosed as asthma. When Moore returned to work on March 17, 1997, she asked her supervisor to be reassigned from the F-Wing to a different building claiming she believed that something in the F-Wing second floor aggravated her asthmatic condition. Her supervisor reassigned her to F-Wing first floor on March 19, 1997. Her duties there included carrying and disposing of bags of dust. She claimed she was only able to work half of the day before her asthma flared up and she had to go home.

On March 20, 1997, her employer assigned her to work at the N & O buildings. She worked there for five weeks without asthma problems. She was doing the same custodial work as when she was in the F-Wing building. On April 3, 1997, she strained her right wrist while lifting a mop bucket filled with water. Due to this injury, she went on sick leave until April 14, 1997.

At some point in April 1997, Moore consulted with NJEA Attorney Louis Bucceri regarding the work site reassignment and her health issues. Bucceri advised her that the Board had to accommodate her at least once for her health problems; he observed that the accommodation was made.

On April 10, 1997, the Board hired GA Environmental Services, Inc. (GAESI) to conduct an air quality inspection of the classroom buildings, including F-Wing. No major air quality problems were found. When Moore returned to work on April 14, 1997,

she was reassigned to the first floor area of F-Wing. Later that day she became ill again with breathing problems and went home, although the reason she gave her supervisor was that her wrist still hurt.

On April 30, 1997, Moore received a letter from the Board stating that it decided not to renew her for the 1997-1998 school year. No cause was given except that her contract is reviewed and renewed on a yearly basis. The Association, on her behalf, requested a meeting with the Superintendent to seek reconsideration of her non-renewal. Following the meeting on May 28, 1997, the Superintendent confirmed her non-renewal citing poor performance and attendance. By letter dated June 25, 1997, the Board confirmed the Superintendent's action not to renew Moore for 1997-1998.

In the meantime, on May 7, 1997, Moore filed a health complaint with the New Jersey Department of Health and Senior Services, Public Employees' Occupational Safety and Health Program (NJDHSS, PEOSHP). On May 8, 1997, Moore was diagnosed with a medical problem unrelated to her health complaint and was on disability leave from May 8, 1997 until June 29, 1997.

Moore returned to work on June 30, 1997, and met with her supervisor and was told she was not renewed due to her "poor performance and attendance" on the job. Immediately thereafter, the Association processed a grievance on her behalf contesting the termination. It resulted in an arbitration hearing December 11, 1997.

On October 16, 1997, a health inspection was conducted by NJDHSS, PEOSHHP concerning items in the health complaint Moore had filed on May 7, 1997, however no violations were identified.

In November 1997, the Association filed a discrimination claim on Moore's behalf with the New Jersey Department of Labor, Office of Public Employees' Safety (NJDOL, OPES) claiming she was terminated in retaliation for the exercise of protected rights under the Public Employees' Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq. (PEOSHA). On December 10, 1997, Moore was interviewed by Occupational Safety Consultant Robert Toft.

On December 11, 1997, the termination grievance was processed to arbitration. Moore was represented by NJEA Representatives Robert Artz and Peg Novicki. The arbitration was to determine if Moore's termination violated the collective negotiations agreement.

On January 24, 1998, the arbitrator issued his award. He ordered Moore reinstated with back pay, benefits, and seniority, finding the non-renewal violated the collective negotiations agreement between the Board and Association. The award stated: "...Moore shall be returned to the position she enjoyed prior to the action of the Board to non-renew her employment at the rate of pay which would have been determined by the Agreement." The decision was based on contractual violations and was not based on the health and safety complaints Moore filed with the NJDHSS, PEOSHHP.

While the arbitration award reinstated Moore to the position she enjoyed prior to the non-renewal -- her custodial position -- it also noted that Moore had previously been found to be driving without a license. The Board did not discipline her for that, but the arbitrator suggested discipline would have been upheld. The arbitrator also noted that the Board's decision to reassign her from driving to custodial duties was consistent with its action in similar circumstances.

Moore returned to work as a custodian on January 28, 1998. Shortly thereafter, Moore complained to her Association representative and her supervisors about being asked to do more work than others, and the Board's refusal to return her to bus driving duties. Moore alleges that on February 5 and March 3, 1998, NJEA Representative Artz told her to stop complaining and do her job, that in six months or so, the Board may reconsider her for driving duties, and that Moore should look elsewhere if what she really wanted was to drive a bus. The Association did not pursue a formal claim for Moore to be returned to bus driving or to equalize her work load.

Moore also complained to her Association representative and supervisors about sexual harassment by co-workers. Moore initially complained about the use of foul and sexually explicit language by co-workers in early 1997. At some point in the Spring 1997, the Board circulated a memorandum to the custodial staff concerning the use of improper language which the custodians were required to

sign. When Moore returned to work in January 1998, she contends the harassment began again. After she reported it, a meeting was scheduled for a date in February 1998 to be attended by Moore, her supervisor and an NJEA representative. Moore was hospitalized in early February 1998, thus the meeting was cancelled.

On April 2, 1998, NJEA Attorney Nancy Oxfeld met with Moore, Moore's husband, and NJEA Representative Artz about Moore's numerous complaints. On April 9, 1998, Oxfeld wrote Moore a nine-page letter. Oxfeld advised that:

1. The Association would prepare a petition on Moore's behalf regarding the Board's failure to provide her workers' compensation days for a period beginning February 11, 1998. Oxfeld noted, however, that her petition was likely to be found untimely filed and the only hope was to try and settle the matter with the Board.^{4/}

2. Oxfeld advised Moore to pursue her claim regarding workplace sexual harassment; however, the Association could not represent her because there was a conflict regarding when the harassment was reported and whether the Board responded. It

^{4/} In its June 3, 1998 position statement in this matter, the Association noted that Moore has refused to sign a "P.R. and R." (Professional Rights and Responsibilities) form required to obtain legal assistance from NJEA. Moore has not returned and signed a petition to be filed with the Commissioner of Education regarding the refusal of her employer to grant her time off with pay for workers' compensation without using sick leave. The Association also noted that the petition may no longer be timely.

appeared to Oxfeld that the Board did respond to Moore's complaints. Additionally, Oxfeld advised that even if Moore's sexual harassment claims were sustained, a damages award would be difficult to establish because Moore was claiming damages from several different causes; change of job position/duties, shift change, work location change, work load inequity, improper discipline/disciplinary transfer, racial discrimination and unhealthy work environment. Oxfeld advised that it would be difficult to determine damages, if at all, based on the multiple causes. Despite her view that the NJEA should not represent Moore on the sexual harassment claim, Oxfeld advised that Moore could seek other legal opinions and/or file claims with the Equal Employment Opportunity Commission (EEOC) or Division on Civil Rights or Superior Court^{5/} on her own or with legal representation. Oxfeld urged her to explore those options.

3. Oxfeld advised Moore that she did not agree that a racial discrimination claim could be sustained because

- a. the person who replaced Moore driving the bus was a black female;
- b. all but one of the male custodians who allegedly sexually harassed Moore were black;
- c. all bus driver/custodians are either black (three) or asian (one).

^{5/} It appears that Moore does have a claim pending in Superior Court and is represented by counsel in that matter.

Oxfeld also advised Moore of her options to seek alternate legal advice, file claims on her own behalf or provide additional information.

4. Oxfeld advised Moore that the collective negotiations agreement provides the business administrator the sole discretion to designate and remove bus drivers and Moore had no other contractual entitlement to the position.^{6/}

5. Oxfeld advised that as a matter of law, the Board had the prerogative to reassign Moore to a different shift and seniority was only triggered by the collective negotiations agreement if the reassignment was to the third shift. Moore was not reassigned to the third shift.

6. As to Moore's 1997 non-renewal, Oxfeld advised that the issue was moot because the Association grieved the matter to arbitration, prevailed, and Moore was reinstated with back pay. Although Moore believed the reinstatement was to her bus driver/custodian position, Oxfeld advised that the arbitrator's decision reinstated Moore to the position she had when she was terminated, custodian.

^{6/} The parties have a collective negotiations agreement effective from 1996 through 1999, which contains the following relevant provision:

Article XV "PAY"

E. 2. Anyone who is designated by the Business Administrator as an active bus driver must have a CDL license, and if so designated shall receive a stipend of \$700.

7. Oxfeld addressed Moore's concern that documents were placed in her personnel file without her notice. Oxfeld observed that none of the documents suggested Moore received them; thus none warranted a response or explanation from Moore. Additionally, Oxfeld advised that the collective negotiations agreement does not prevent such documentation being placed in personnel files.

8. Oxfeld cautioned Moore about pursuing her claim that she could not perform certain assignments due to dust in hallways because she had adverse health reactions. Oxfeld noted that Moore's medical documentation did not support her claim. Additionally, Oxfeld observed that Moore's alleged condition suggested she may not be capable of performing custodial duties.

Moore contends the Association should have sought Attorney Bucceri's advice on these matters because he previously consulted with her in April 1997.

On June 22, 1998, NJDOL, OPES found Moore's PEOSHA claim was without merit. NJDOL, OPES Director Louis J. Lento, based on Toft's December 10, 1997 interview of Moore and various materials submitted by the Board and the Association, found in relevant part as follows:

1. On May 7, 1997, Moore filed a complaint (#8948) with NJDHSS, PEOSHP and described her complaint as: Severe dry throat with pain when working in the F-Wing.
2. The NJDHSS, PEOSHP made an inspection on October 16, 1997 of the employees work area at 45 Reinhardt Road which included C-Wing (Basement), and F-Wing (1st and 2nd Floor). No violations of the Public Employees' Occupational Safety and Health Indoor Air Quality Standards were observed.

3. The employer produced documentation of a walk through indoor air quality inspection made by GAESI on April 10, 1997 where no substantial air quality problem was identified in the F-Wing areas complained of by Moore.

4. On April 30, 1997, Moore received a letter from her employer stating that she was subject to possible job termination by June 30, 1997 which was eight (8) days prior to the date Moore filed a safety and health complaint with the NJDHSS, PEOSHHP.

5. The appellant was not able to conclusively establish nor offer proof from an independent authority, knowledgeable in health matters, that the work place environment aggravated her asthmatic condition as alleged.

6. The appellant failed to demonstrate that her job termination of June 30, 1997 was the result of filing health and safety complaints with either the NJDHSS, PEOSHHP or the NJDOL, OPES.

7. As a result of the arbitration hearing of December 11, 1997 the complainant accepted reinstatement to her previous position as custodian.

It appears Moore contested Lento's findings and the matter was referred to the Office of Administrative Law (OAL). By letter dated November 11, 1998, Oxfeld advised OAL that the NJEA would no longer be representing Moore in the matter. A hearing was scheduled for February 13, 1999. It is not clear what the status of that proceeding is now.

Finally, at some point during 1998, Moore requested the Board to reassign her to drive buses. Business Administrator Giglio responded by letter dated October 27, 1998, as follows:

In response to your request to be reassigned to drive the buses, I draw your attention to the Custodial/Maintenance contract, page 18E2 (copy

attached), "The Business Administrator shall designate any employee who has the proper CDL license to drive the bus."

At our meeting on October 24, 1996, I stated that you would be taken off the bus and we would consider your reassignment to the bus in one year. Based upon your past attendance since being reinstated, I am not designating you to bus driving duty.

From October 25, 1996 until October 21, 1998, out of a possible 469 workdays, you were out a total of 190.5 days (see attached). Although I am aware that you are fully entitled to vacation and personal days, you still were not here to drive the bus.

Further, it has been brought to my attention through the Workers Compensation doctor that you are being treated for depression that is unrelated to your work. As an administrator of Passaic County Technical Institute, I have a responsibility to the faculty, staff and students to keep their safety and well being first and foremost.

For these reasons, I am not reassigning you to the bus, although you are still assigned as a Custodian.

ANALYSIS

Although Moore contends the Association violated N.J.S.A. 34:13A-5.4b(1), (2), (3), (4) and (5), she offered no facts to support her 5.4b(2), (3), (4) or (5) claims. While Moore's submissions are lengthy and detailed, they all relate to her contention that the Association failed to represent her between September 28, 1996 and the date she filed the charge, April 2, 1998. The only additional alleged violation appears to be her contention that the Association should have allowed her to meet again with Attorney Bucceri not Attorney Oxfeld in April 1998.

The Act requires that an unfair practice charge must be brought within six months of the alleged unfair practice. N.J.S.A. 34:13A-5.4c states, in relevant part:

...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-month period shall be computed from the day he was no longer so prevented.

See City of Newark (Montgomery), P.E.R.C. No. 2000-57, 26 NJPER 91 (¶31036 2000), adopting D.U.P. No. 2000-5, 25 NJPER 392 (¶30169 1999); N.J. Sports & Exposition Auth. (Moraites), D.U.P. No. 99-11, 25 NJPER 145 (¶30066 1999); City of Hoboken (Mancuso), D.U.P. No. 96-11, 22 NJPER 2 (¶27002 1995).

In application, the statute of limitations period normally begins to run from the date of some particular action, such as the date the alleged unfair labor practice occurred, provided the person(s) affected thereby are aware of the action. The date of the action is known as the "operative date", and the six-month limitations period runs from that date. Therefore, in order to be timely, a charge must be filed within six months of the operative date. Charges filed past that date are generally untimely. Two exceptions to timeliness requirements are (1) tolling of the limitations period and (2) a demonstration by the charging party that it was "prevented" from filing the charge prior to the expiration of the period.

The standard for evaluating statute of limitations issues was set forth in Kaczmarek vs. N.J. Turnpike Auth., 77 N.J. 329 (1978). The Supreme Court explained that the statute of limitations was intended to stimulate litigants to pursue their litigation diligently and to prevent the litigation of stale claims, but it did not want to apply the statute strictly without considering the circumstances of individual cases. Id. at 337-338. The Court noted it would look to equitable considerations in deciding whether a charging party slept on his or her rights. But the Court still expected charging parties to diligently pursue their claims.

Moore charges that she was denied fair representation by the Association between September 28, 1996 and April 2, 1998. Thus, a complaint applying the six-month statute of limitation may only issue on events occurring on or after October 2, 1997.

The following allegations, occurring before October 1997, fall outside the six-month statute of limitations:

- A. The 1996 revocation of bus driving duties and the Association's refusal to file a grievance.
- B. The October 3, 1996 racial slurs/statement incident and the Association's refusal to file a grievance.
- C. The October 1996 refusal by Krattiger to allow Moore to speak with Association representative Tucker.
- D. The November 7, 1996 shift change and the Association's refusal to file a grievance.

Moore offers no facts to suggest that she was prevented from timely filing a charge based on the foregoing allegations of

misconduct. Compare Kaczmarek; N.J. Turnpike Auth. (Beall), D.U.P. No. 80-10, 5 NJPER 518 (¶10268 1979), rev'd. in part, P.E.R.C. No. 80-106, 6 NJPER 106 (¶11055 1980); New Jersey Transit Bus Operations (Chimbumu), D.U.P. No. 95-23, 21 NJPER 54 (¶26038 1995) (charge timely where action initiated in court within six months of alleged illegal conduct, then refiled with the Commission); see also N.J. Institute of Technology (Giegold), P.E.R.C. No. 97-123, 23 NJPER 296 (¶28135 1997). Based on the foregoing, those allegations which concern alleged misconduct occurring before October 2, 1997, are not timely filed and are dismissed.

The following conduct occurred within the six-month period preceding the filing of the charge:

1. November, 1997, the Association filed a discrimination claim with NJDOL, OPES regarding Moore's PEOSHA claim.
2. December 11, 1997, the Association represented Moore in an arbitration hearing seeking reinstatement to her custodial position. Moore contends that some witnesses lied during the hearing, but the Association refused to take action against them.
3. In February, 1998, the Association scheduled a meeting which included Moore, an Association representative and Moore's supervisor to address complaints of foul and/or sexually explicit language in the work place.
4. February 5 and March 3, 1998, NJEA Representative Artz advised Moore to stop complaining about workload inequities and the Board's refusal to reinstate her to bus driving duties, do her job

and perhaps the Board would reconsider its position and/or look for another job if she wanted to drive a bus.

5. April 2, 1998, the Association arranged for Moore to consult with Attorney Oxfeld regarding her numerous complaints.

6. On some unspecified date, Association representatives became aware of documents placed in Moore's personnel file that she contends should not be there and took no action to have them removed.

Section 5.3 of the Act empowers an employee representative to represent employees in the negotiations and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly in negotiations and contract administration. The standards in the private sector for measuring a union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171 (1967). Under Vaca, a breach of the statutory 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. Id. at 191. That standard has been adopted in the public sector. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); see also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

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. OPEIU Local 153, Mackaronis and Middlesex Cty. and NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd. NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. 91 N.J. 242 (1982); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); and AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

Here, Moore does not show that the Association breached its duty of fair representation owed to her. No facts were presented that demonstrate the Association treated her differently from any other Association member. On the facts presented, the Association diligently and in good faith represented Moore on numerous occasions and with varying degrees of success.

Moore's claim that the Association failed to assist her in recovering her bus driver position does not state a violation of the duty of fair representation. Krattiger, Moore's local Association president, specifically represented Moore by attending the October 3, 1996 meeting with Business Administrator Giglio for the express purpose of seeking Moore's reinstatement to the bus driving assignment.

Dissatisfied with Krattiger's efforts, or more specifically with the result, Moore sought Association Representative Tucker's assistance. He advised her that the driving assignment was within the Board's discretion.

Article XV of the collective negotiations agreement provides, in relevant part, that:

Anyone who is designated by the Business Administrator as an active bus driver must have a CDL license, and if so designated shall receive a stipend of \$700.00.

Thus, Tucker and Krattiger took the position that the Association could not grieve the matter because the Board retained the contractual discretion to designate who drives buses. This is not evidence of bad faith or discriminatory conduct. OPEIU, Local 153.

Moreover, an employee representative fulfills its statutory obligation to represent employees when, as in this case, it evaluates grievances on the merits and makes a judgment as to whether arbitrating the issue is in the interests of its unit members as a whole. Jersey City Bd. of Ed., D.U.P. No. 93-7, 18 NJPER 455 (¶23206 1992); Essex-Union Joint Meeting and Automatic Sales, Servicemen and Allied Workers, Local 575 (McNamara), D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991). Employee organizations are entitled to a wide range of reasonableness in determining how to best service all of their members. Id. The duty of fair representation does not require a union to process grievances which it believes are non-meritorious. Carteret Ed. Ass'n (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987).

Moore's claim that the Association refused to grieve an alleged October 3, 1996 racial slur/statement does not state a violation of the duty of fair representation. Even if Moore's

allegations were true, they do not relate to the administration or negotiation of a collective agreement. While Moore may have a private cause of action for racial discrimination against the Board or Giglio, that matter belongs before the Division on Civil Rights, the courts or some other forum with primary jurisdiction. See generally, New Jersey Network, D.U.P. No. 98-32, 24 NJPER 245 (¶29117 1998).

Moore's claim that Krattiger refused to allow her to speak with NJEA Representative Tucker does not constitute a violation of the duty of fair representation. The Union's designation of a representative to assist employees is an internal union matter over which the Commission has no jurisdiction. Calabrese v. PBA Local 76, 157 N.J. Super. 139, 146 (App. Div. 1978); Jersey City Supervisors Ass'n, P.E.R.C. No. 83-32, 8 NJPER 563, 565 (¶13260 1982); Camden County College Faculty Ass'n, D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987); ATU Local 824, D.U.P. No. 85-9, 10 NJPER 600, 601 (¶15279 1984); Newark Building Trades Council, D.U.P. No. 82-34, 8 NJPER 333 (¶13151 1982).

Moore's claim that the Association refused to grieve her November 7, 1996 shift change does not state a violation of the duty of fair representation. She does not contend when or if she sought Association assistance on this matter and does not allege its refusal was arbitrary, discriminatory or done in bad faith. Moreover, the Association's November 1997 filing of a PEOSHA claim with NJDOL, OPES is evidence of its good faith representation of Moore.

The Association's filing of a grievance and processing it through arbitration regarding Moore's 1997-1998 non-renewal is further evidence of its good faith representation of Moore. While the PEOSHA claim was unsuccessful, the arbitration award was clearly a successful result; Moore was reinstated, with back pay, to the position she held when the Board determined not to renew her employment as custodian. As to her contention that witnesses lied during the December 11, 1997 arbitration hearing but the Association failed to take action against them, Moore does not identify who lied, what they lied about and whether it was material to the hearing. Since she was reinstated to her position, the alleged lies did not adversely impact her effort to be reinstated.

As to Moore's allegation that the Association failed to represent her with regard to allegations of sexual harassment, the Association scheduled a meeting to be attended by Moore, supervision and an NJEA representative after Moore's return to work in January 1998. The meeting did not take place because Moore returned to work on January 28, 1998, and went out on sick leave less than two weeks later -- before the scheduled meeting. Even if a more effective effort could have been made to address the issue, that circumstance does not constitute a breach of the duty of fair representation. See Steelworkers v. Rawson, 495 U.S. 362, 134 LRRM 2153, 2158 (1990).

Moore's claim that Association Representative Artz told her on February 5 and March 3, 1998 to stop complaining about her assignments and/or look for another job, does not constitute a

breach of the duty of fair representation. Unions are permitted a wide range of reasonableness in representing their membership. Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983); see also New Jersey Transit; Jersey City Board of Education; Essex-Union Joint Meeting (McNamara). Taken by itself, an employee representative's "advice" to employees does not necessarily violate its duty of fair representation, particularly since the Association was investigating every work place claim Moore made.

The April 2, 1998 meeting between Moore and Attorney Oxfeld, and Oxfeld's nine-page opinion letter, is further evidence of the Association's efforts to represent her. Moreover, the Association is not required to provide Moore with legal counsel, much less counsel of her choice. Thus, Moore's contention that the Association should have referred her to Attorney Bucceri instead of Oxfeld does not state a violation of the duty of fair representation. Bergen Comm. College, P.E.R.C. No. 84-117, 10 NJPER 262 (¶15127 1984); Carteret Ed. Ass'n (Radwan); Camden Cty. College, D.U.P. No. 89-11, 16 NJPER 171 (¶20072 1989).

Finally, Moore's claim that the Association failed to represent her in seeking to have certain documents removed from her personnel file does not state a violation of the duty of fair representation. A charge must have specific dates which attach to each allegation. In the absence of specific dates, we will not assume that a charge is timely. This allegation does not refer to

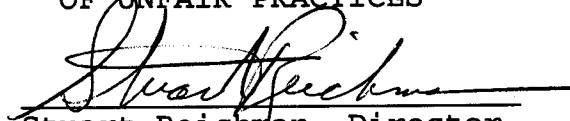
any date.^{7/} N.J.S.A. 34:13A-5.4(c) precludes the Commission from issuing a Complaint where an unfair practice charge has not been filed within six (6) months of the occurrence of any unfair practice, unless the aggrieved person was prevented from filing the charge. See North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977). The charge does not allege that the Association failed to represent her on this issue within the six (6) month limitation requirement, thus, on its face, this allegation is untimely.

Based on the foregoing, the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{8/}

ORDER

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: December 26, 2000
Trenton, New Jersey

^{7/} Our letter of November 29, 2000 advised Moore of this deficiency and warned that, absent specific dates in the charge, we would not assume that the allegation was timely. No amendment was thereafter filed to the charge.

^{8/} N.J.A.C. 19:14-2.3.