

H.E. NO. 90-1

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN REGIONAL TEACHERS' ASSOCIATION,

Respondent,

-and-

Docket No. CI-H-89-21

BARBARA TRUEX,

Charging Party.

SYNOPSIS

A Hearing Examiner grants in part and denies in part respondent's motion for summary judgment on charges that it violated the duty of fair representation. For those portions of the charges on which the motion was granted, the Hearing Examiner found that MRTA's conduct was not arbitrary, discriminatory or in bad faith. For those allegations on which the motion was denied, the Hearing Examiner found that material issues of fact about MRTA's motives for its conduct required a plenary hearing.

The Hearing Examiner also found that the original charge was timely filed.

The parties may appeal the Hearing Examiner's decision by filing exceptions by special permission. N.J.A.C. 19:14-4.8(e), (f); N.J.A.C. 19:14-4.6(b).

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Appearances:

For the Respondent

Oxford, Cohen, Blunda, Friedman, LeVine & Brooks, Esqs.
(Mark J. Blunda, of counsel)

For the Charging Party

I.L.G.W.U., Max Zimny, General Counsel
(Ira J. Katz, on the brief)

MOTION FOR SUMMARY JUDGMENT

On September 12, 1988, January 17, 1989 and February 27, 1989, Barbara Truex ("Truex"), a secretarial employee of the Matawan Board of Education ("Board"), filed an unfair practice charge, amended charge and a "rider" to the amendment against the Matawan Regional Teachers' Association ("MRTA"). The charge alleges that between May 12 and June 15, 1987, the MRTA breached its duty of fair representation by failing to discuss the 1987-88 secretarial work calendar with a Board collective negotiations representative. The charge states that the Board unilaterally increased the secretarial work calendar in 1987-88 and that an arbitration award, issued in August 1988, on an MRTA grievance protesting the calendar change,

contained a finding that the MRTA was never available to discuss the calendar with the Board negotiator. The MRTA's omissions allegedly violated subsection 5.4(b)(1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

On December 9, 1988, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On December 23, the MRTA filed an Answer, agreeing that the 1987-88 secretarial work calendar was set by the Board without negotiations and that it had more workdays than the 1986-87 calendar. The MRTA denied that it failed to represent the interest of the secretaries and asserted that the charge is barred by the six-month statute of limitations. See N.J.S.A. 34:13A-5.4(c).

On January 17, 1989, Truex filed an amended charge alleging that in September 1988, the MRTA refused to respond to her inquiries about its efforts to negotiate with the Board over secretarial work calendar changes in the 1988-89 school year. She also alleged that the MRTA refused to arbitrate the clerical bargaining unit's grievance protesting the change.

Truex further alleged that the MRTA failed to garner unit membership support before urging the Governor and legislature to enact legislation providing increased health insurance benefits to retired teachers. She also alleged that the MRTA scheduled

^{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."

membership meetings at times it knew that the support staff was on duty and unavailable. The actions allegedly resulted in the resignation of forty-three clerical employees from the MRTA, leaving it without majority support of the unit.

On February 1, 1989, the MRTA filed an Answer to the amended charge. It acknowledged that Truex filed a grievance protesting the 1988-89 secretarial work calendar. The MRTA also asserted that although it initially agreed to merge the grievance with one already pending before an arbitrator, it later determined not to submit the matter to binding arbitration. The MRTA denied breaching the duty of fair representation and maintains that it represents a majority of the secretarial unit employees.

On February 22, 1989, the MRTA filed a motion for summary judgment and stay of proceedings, pursuant to N.J.A.C. 19:14-4.8. The motion was accompanied by an affidavit and other documents, including a copy of an August 12, 1988 arbitration award. The MRTA urges dismissal because the original charge was untimely filed, and it and the amended charge fail to state a cause of action.

On February 27, 1989, Truex filed a "rider" to the amended charge, alleging that the MRTA did not respond to her request for a copy of an arbitration decision allegedly awarding teachers extra pay for time worked on snow make-up days. Truex purportedly asked the MRTA why support staff had not been included in the grievance. Truex allegedly requested the decision and response on February 6, 1989.

On April 3, 1989, charging party filed a brief in opposition to the motion. On April 18, 1989, charging party filed a signed certification of facts. The MRTA did not file a response to the rider to the amended charge.

The motion was referred to the Chairman of the Public Employment Relations Commission, pursuant to N.J.A.C. 19:14-4.8. He referred the motion to me for a decision. Based upon the papers filed by the parties, I make the following:

UNDISPUTED FINDINGS OF FACT

1. Barbara Truex ("Truex") is a public employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

2. Matawan Regional Teachers' Association ("MRTA") is an employee representative within the meaning of the Act and represents about 500 employees in four negotiations units at Matawan-Aberdeen Regional School District Board of Education ("Board"). Truex and about 75 other employees are in the "secretarial-clerical" bargaining unit. MRTA also represents separate units of bus drivers, custodians and teachers. The teachers' unit is the largest of the four units.

3. The MRTA (secretarial-clerical employees) and the Board executed a collective negotiations agreement extending from July 1, 1983 through June 30, 1986. Article V, Section D of the agreement states: "The secretarial work calendar for twelve-month employees

shall be established by the Superintendent of Schools after consultation with the Association."

The 1987-88 Calendar

4. At a public Board session on May 11, 1987, MRTA President Panos requested a meeting to draft a 1987-88 calendar. The Board secretary reported that a revised calendar was drafted "which takes into consideration the opening of school after Labor Day and a revision of some of the holiday schedules."

In late May 1987, the Board advised the Association that it was meeting in mid-June 1987, to consider two versions of the 1987-88 work calendar. The Board Secretary advised MRTA President Panos, "if you can schedule a meeting with me prior to that time, I am sure that your input would be welcomed." Panos acknowledged in her affidavit that "we were not able to arrange such a meeting before June 15, 1987."

5. On or about June 29, 1987, the Board adopted a revised calendar, reducing the spring recess from 6 days to 3 days and increasing secretarial workdays from 234 in 1986-87 to 237 in 1987-88. Truex and the MRTA agree that the Board set the 1987-88 calendar without negotiations.

6. On or about July 17, 1987, the MRTA filed a step 3 contractual grievance protesting the Board's June 29 approval of the 1987-88 calendar for teaching and secretarial employees. MRTA President Panos signed the grievance. On or about September 16, 1987, the step 3 grievance hearing was held. On or about October

28, 1987, the Board Superintendent issued his decision, denying the grievance as it pertained to the secretarial unit because "the Board exercised its management prerogative...to establish [...] the calendar for twelve month clerical employees." (See Appendix VI to MRTA motion). The MRTA had withdrawn the grievance as it pertained to the teachers unit.

7. On or about November 4, 1987, the MRTA notified the Board of its intention to seek arbitration on the secretarial unit grievance. An arbitrator was appointed and he conducted a hearing on or about April 21, 1988. The MRTA filed a post-hearing brief.

8. On August 12, 1988, the arbitrator issued a written opinion and award on the stipulated issue:

Did the Board of Education violate the Collective Bargaining Agreement and past practice by increasing the 12 month clerical work year to [237] days for 1987-88?

The arbitrator denied the grievance and found that the Board did not violate the agreement or past practice. He specifically found that at least on May 11 and 12, 1987, the Board gave the MRTA the opportunity to consult with it about the proposed calendar, but the MRTA "failed to respond." The opinion also states that the contract did not require the Board "to obtain [MRTA] agreement in order to establish a work calendar-only consultation."

9. On or about August 25, 1988, Counsel for MRTA informed President Panos in writing that in his opinion, "there is no basis to vacate the [August 12, 1988] award in the Superior Court."

The 1988-89 Calendar

10. On or about June 9, 1988, the Board secretary sent a memorandum and proposed calendar to MRTA President Panos. The secretary asked for "input before June 13, 1988, as it is possible that the program committee will wish to act [at that time]." The attached calendar proposal had a 233-day work year.

11. On or about June 17, 1988, Panos sent a letter to the Board secretary, acknowledging her review of the proposed calendar and listing four "concerns." None of them refer to the proposed 1988-89 secretarial work calendar.

12. On or about June 27, 1988, the Board adopted the 1988-89 school calendar, purportedly providing 237 work days for secretarial employees.

13. On July 22, 1988, two secretarial unit employees wrote to Panos, complaining that the Board's calendar for the the 1988-89 school term lengthened their work year. The employees requested Panos to file a grievance and inform them of her efforts within ten days. On July 27, Panos wrote to the employees, acknowledging receipt of their letter and informing them of the then-pending arbitration award concerning the 1987-88 school term.

14. Sometime in late July or early August 1988, Truex filed a grievance on behalf of the secretarial unit protesting a change in the 1988-89 work calendar.

On or around the same date, MRTA counsel wrote a letter to Panos "to reduce the misinformation that continues to circulate among the clerical bargaining unit...." Counsel urged Panos to

share his "status report" with the entire clerical unit. His three page, twelve paragraph report, essentially a chronology, concludes with this statement:

As with the calendar and work year grievances that we previously won in arbitration, the result of this arbitration award [i.e., concerning 1987-88 term] will be binding on the Board of Education for future clerical calendar disputes, including the 1988-89 calendar. That, of course, has been the consistent position of Mr. Klaven, Mr. DeMario and the Association throughout these various calendar arbitrations.

15. Sometime before August 12, 1988, Truex, the MRTA president and counsel, and Board deputy superintendent of personnel met to discuss the grievance. According to Panos' affidavit, "it was agreed by all parties that the grievance would be controlled by the outcome of the [arbitration award concerning the 1987-88 secretarial work calendar] which the parties were still awaiting."

16. On September 2, 1988, Truex wrote a letter to Panos, stating she received a copy of August 12 arbitration award and was disturbed "by the basis for it." She also asked to be advised of the MRTA's efforts to consult with the Board before it adopted the 1988-89 calendar. Truex did not receive a reply.

17. On or about September 15, 1988, the Board Superintendent denied Truex's grievance at step 3. The document he issued states that a hearing was held on August 16, 1988. The Superintendent also stated his rationale for denying the grievance:

As discussed at the grievance hearing, the arbitration award of Paul J. Krebs would govern this grievance. The arbitrator ruled in favor of the Board. A copy of the arbitrator's award is

available for anyone deserving a copy. It is the Board's position that the subject matter is identical.

18. On September 22, 1988, Truex wrote to Panos, requesting the MRTA to arbitrate the 1988-89 calendar grievance.

19. According to the Panos affidavit, the MRTA was uncertain about proceeding to arbitration. She sought advice from the New Jersey Education Association, which in turn solicited the opinion of three law firms which represent the NJEA. The firms unanimously recommended that the MRTA not proceed to arbitration. On or about October 12, 1988, MRTA counsel wrote to the NJEA that he "could not in good faith litigate again a case that involves the same parties, the same issues, the same contract and assuredly, the same result. In sum, I strongly recommend against arbitration of this grievance." Panos affirmed that based upon the advice of NJEA attorneys, the MRTA decided not to submit the 1988-89 calendar grievance to arbitration. On November 30, 1988, Panos wrote a letter to Truex informing her that based upon the advise she received from NJEA attorneys and uni-serve representative, the MRTA was not pursuing the 1988-89 clerical grievance to arbitration "a second time."

Health Insurance

20. In the fall of 1988, the MRTA learned that two bills, A-2809 and S-1044, were nearing votes in the New Jersey Legislature. The proposed legislation increased health insurance coverage for retired members of the Teachers' Pension and Annuity

Fund. The NJEA requested its locals to support the bills. In November 1988, the MRTA solicited its membership to write letters to the Assembly Speaker and Governor, urging their support for the legislation.

The legislation does not concern the Public Employee Retirement System, which covers support staff, including clerical employees.

MRTA - Secretarial Unit Relationship

21. In October 1987, Truex informed Panos of the secretarial unit's dissatisfaction with recommended wage increases for secretarial employees in a September 1987 fact finder's report on a successor collective negotiations agreement. At Panos' invitation, Truex observed a secretarial unit negotiations session on or about November 5, 1987. No clerical employee was on the negotiating committee. Panos asked the Board to give the clerical unit more money. The Board was willing to discuss an increase for the third year of a three-year agreement. After a caucus, Panos told the Board that the MRTA was willing to shift \$35,500 from the teachers' unit to the clerical unit in each of the second and third years of the contract. When combined with the fact finder's wage recommendation, the monies represented a 13% increase in the second year and a 13.3% increase in the third year.

22. On or about January 28, 1988, Truex attended an MRTA meeting at which Panos distributed proposed salary guides, including only a 5% increase for secretarial employees in the third contract

year. In February 1988, Truex observed a negotiations session and complained to Panos about the third year wage increase. Panos stated that she shifted back to the teachers' unit the \$35,500 in the third contract year that she had reallocated to the clerical unit on or about November 5. Panos also commented that she had the authority to "put the money wherever she wanted..." and it was "a sorry day that she ever offered the money to the clerical employees. She gave us the money and she could take it away." (Truex affidavit at p. 9).

23. In late February 1988, after the Board presented its "fair and final offer" to the MRTA, (reflecting salary guide increases of 13% and 13.3% in the second and third years), secretarial unit employees delivered a petition to the MRTA vice president calling for a general meeting and the opportunity to vote on the offer. The vice president reported back to the employees that Panos said "[the petitions] were worthless." On another occasion, Panos asked Truex what was happening. Truex responded that the clerical unit was unhappy with MRTA representation. Panos responded, "if you don't like it, find someone else to represent you."

24. On or about March 3, 1988, the clerical unit scheduled a meeting to vote on the Board's offer. Panos scheduled an MRTA meeting and about 40 clerical employees, including Truex, attended. Panos stated that her recommendation to reallocate money to the clerical unit was conditioned upon the Board offering the teachers'

unit an 8% wage increase. Panos also said that the clerical unit's vote on the proposed contract was meaningless and that they could not be represented at negotiations. Panos also said that if the clerical unit voted on the final offer, she would withdraw the monies she offered to shift from the teachers' unit. Later that day, clerical unit employees voted in favor of the Board's final offer.

MRTA Meetings

25. Clerical employees at the high school generally work from 7:30 a.m. to 3:30 p.m.; central office clerical employees work from 8:30 a.m. to 4:30 p.m.; and other clerical employees work from 8 a.m. to 4 p.m.

The MRTA usually conducts its meetings in the high school media center or cafeteria at 7:30 a.m. or 12:15 p.m. Clerical employees rarely attend MRTA meetings.

An undetermined number of clerical employees have resigned their membership in the MRTA.

26. On January 24, 1989, the MRTA announced that teachers would be paid for the time worked on certain snow make-up days, pursuant to an arbitration award. On February 6, 1989, Truex and two other clerical unit employees wrote to President Panos, requesting a copy of the award and an explanation why "aides" were not included in the grievance since they, along with the teachers, had been released early on the half days. The MRTA did not respond to the request.

ANALYSIS

N.J.A.C. 19:14-4.8(d) provides that a summary judgment motion may be granted:

[i]f it appears from the pleadings, together with the briefs and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law.

See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954); New Jersey Civil Practice Rules (R.4:46-2). Summary judgment may be granted only with extreme caution. The motion must be considered in the light most favorable to the opposing party, all doubts must be resolved against the moving party, and the procedure may not substitute for a plenary hearing. State of New Jersey (Human Services), P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988), citing Baer v. Sorbello, 177 N.J. Super 182, 185 (App. Div. 1981).

"Material facts" tend to establish the existence or non-existence of an element of a charge or defense that is derived from the controlling substantive law. See Lilly on Introduction to the Law of Evidence (West Publishing 1978) at p. 18; McCormick, On Evidence (West Publishing, 2nd edition; 1978) at p. 434. Truex's charge alleges that the MRTA violated its duty of fair representation.

Unions have power to negotiate terms and conditions of employment, but must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. 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." Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967). The Commission and New Jersey Courts apply the Vaca standard in evaluating fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981); Union City and FMBA Local No. 12, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982); Hamilton Tp. Ed. Assn., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978); Lawrence Tp. PBA, Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983).

A majority representative's mere negligence, standing alone, does not prove a breach of the duty of fair representation. Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984). Nor does a union decision resulting in a detriment to one group of employees necessarily establish a breach of the duty. See Belen. In Ford Motor Co. v. Huffman, 345 U.S. 330 (1953), the U.S. Supreme Court expressed the reason behind this rule of law:

...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 servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. [Id. at 337-338]

The Vaca standard has been applied in cases involving alleged breaches during contract negotiations and to claims arising during grievance processing. Lawrence Tp. PBA, Local 119; Fair Lawn Bd. of Ed..

I first address the MRTA argument that Truex's original charge is untimely filed. Truex filed the charge on September 12, 1988, alleging that the MRTA violated the duty of fair representation between May 12 and June 15, 1987, when it failed to consult with the Board about the 1987-88 secretarial work calendar. Truex asserts that she was first aware of the MRTA's omission in August 1988, after reading the arbitration award, issued August 12, in which the arbitrator found that in May 1987, the MRTA "failed to respond" to Board requests to consult about the calendar.

The MRTA maintains that Truex began waiving her cause of action on June 29, 1987, when the Board approved the calendar; that she worked the school term under the disputed calendar without filing a charge; that she was in an employment position to know about the calendar and never complained to the employee organization during the six months following June 29, 1987; and that she filed the charge in September 1988 for reasons arising from her interest in the outcome of another unfair practice charge.

Our Act requires that an unfair practice charge be filed within six months of the occurrence of the alleged unfair practice unless the charging party was prevented from filing a charge.

N.J.S.A. 34:13A-5.4(c). In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), the New Jersey Supreme Court described how one is "prevented" from filing a charge:

The term "prevent" may in ordinary parlance connote that factors beyond the control of the complainant have disabled him from filing a timely complaint. Nevertheless, the fact that

the Legislature has in this fashion recognized that there can be circumstances arising out of an individual's personal situation which may impede him in bringing his charge in time bespeaks a broader intent to invite inquiry into all relevant considerations bearing upon fairness of imposing the statute of limitations. Cf. Burnett v. N.Y. Cent. R.R., *supra*, 380 U.S. at 429, 85 S. Ct. at 1055, 13 L.Ed.2d at 946. The question for decision becomes whether, under the circumstances of this case, the equitable considerations are such that appellant should be regarded as having been "prevented" from filing his charges with PERC in timely fashion. [Kaczmarek at 340.]

The original charge concerns the MRTA's failure to consult before the Board approved the 1987-88 calendar. The MRTA's defenses all concern Truex's alleged waiver of rights after the calendar was approved. The undisputed facts do not reveal that Truex knew or should have known that the MRTA failed to assert its contractual right to consult with the Board about the calendar. That fact was not revealed to her until August 12, 1988, when the arbitrator, in his opinion on the grievance protesting the increased number of work days in the 1987-88 calendar, found that the MRTA "failed to respond" to Board requests to consult. Accordingly, I find that Truex was "prevented" from filing a timely charge until the opinion issued and conclude that her September 12, 1988 charge is timely filed. See Tp. of Berkeley, D.U.P. No. 86-2, 11 NJPER 543 (¶16190 1985).

The undisputed material facts concerning the creation of the 1987-88 calendar year are that in early May 1987, Panos asked the Board for a meeting to discuss the calendar; the Board secretary

reported that the "revised" calendar included a starting day after Labor Day and a "revision" of holiday schedules; later in May the Board asked for MRTA "input" on the calendar before June 15; Panos did not arrange a meeting with or respond to the Board before June 15; and that on June 29, 1987, the Board adopted a revised calendar which lengthened the work year of secretarial unit employees.

Truex has alleged no facts suggesting that the MRTA's omission between May 12 and June 15, 1987 was arbitrary, discriminatory or in bad faith. Truex alleges that the MRTA should have been on notice (from the Board secretary's statement that the holiday calendar would be "revised") that a starting date after Labor Day would mean a decrease in the number of holidays and a concomitant increase in the number of workdays for twelve-month secretarial unit employees. Assuming the MRTA was "on notice" of the increase, that knowledge connotes nothing more than negligence when it failed to consult with the Board.

Truex relies upon Trenton Bd. of Ed., P.E.R.C. No. 86-146, 12 NJPER 528, 530 (¶17198 1986), in stating that MRTA's omission "is illogical and the kind of arbitrary conduct the duty of fair representation is designed to curb." In Trenton Bd. of Ed., the Commission termed the employer's admission (that the employee was entitled to the relief sought on her grievance) "strong evidence" that the grievance had merit and that the union's response to the gist of that admission was "arbitrary." There is no factual allegation in this case that the Board was considering making

concessions on its proposed calendar; it was seeking to "consult" to fulfill its contractual obligation. In fact, the Board may very well have refused to alter the schedule, given its steadfast position throughout the grievance-arbitration process.

Trenton Bd. of Ed. may also have implicated an employee's right to have her majority representative "process a grievance to a higher level." The right to consult over the 1987-88 school term belonged exclusively to the MRTA and it could lawfully waive that right by simply not responding to the Board's invitations to consult. Even assuming that the MRTA belatedly sought to vindicate the right by filing a grievance or filed a grievance and processed it through arbitration for the purpose of appearing to be vigilant, I find that the MRTA was merely negligent in failing to consult with the Board between May 12 and June 15, 1987. Its negligence does not amount to a breach of the duty of fair representation. Fair Lawn Bd. of Ed. Accordingly, I grant the motion for summary judgment on Truex's original charge.

Truex's amended charge alleges that in September 1988, the MRTA refused to answer her questions about its efforts to consult with the Board over the 1988-89 calendar. She also alleged that the MRTA refused to arbitrate the secretarial unit's grievance protesting the change. She further asserted that the MRTA did not receive unit membership support before urging the Governor to enact legislation providing increased health insurance benefits to retired teachers. Finally, she alleged that Panos scheduled membership meetings at times it knew that the support staff was unavailable.

That Truex did not receive a response to her inquiry about the MRTA's efforts to consult on the 1988-89 calendar fails to establish that the MRTA's conduct was arbitrary, discriminatory or in bad faith. Notwithstanding any actual harm Truex suffered from not receiving a response, her allegations and MRTA's motion papers reveal no disputed material facts suggesting that MRTA was any more than negligent in not responding to Truex's concerns.

The undisputed facts raise the issue whether the MRTA violated the duty of fair representation by failing to consult with the Board over the 1988-89 secretarial unit work calendar (see findings 10-12). In January 1988, about six months before the MRTA had the opportunity to consult, Panos and Truex disagreed about contract negotiations and Panos expressed her regret that she ever "offered money to clerical employees." Panos also threatened Truex and the secretarial unit in February and March 1988. Although more than two months lapsed before the MRTA had and lost the opportunity to consult, I find that MRTA's motive (if any) in not consulting about the 1988-89 calendar is a material issue of fact.

Accordingly, I deny the motion for summary judgment on that issue.

A union's decision to refuse to arbitrate a grievance is not standing alone, evidence of a breach of the duty of fair representation. Vaca; AFSCME, Local 888 (Brennan), P.E.R.C. No. 89-71, 15 NJPER 71 (¶20027 1988); Rutgers, The State University, et al (Jennings), P.E.R.C. No. 88-130, 14 NJPER 414 (¶19166 1988). In January 1988, some eight months before the MRTA decided against

arbitrating the 1988-89 calendar grievance, Truex and Panos discussed proposed contractual wage increases for secretarial unit employees. In that discussion and others in February and March 1989, Panos threatened secretarial unit employees. Such comments combined with a refusal to arbitrate a grievance raise a material issue of fact about a majority representative's motives for the refusal. However, Truex failed to rebut Panos' statement that shortly before August 12, 1988, the Board deputy superintendent of personnel, Panos and MRTA counsel, and Truex met and agreed that her grievance concerning the 1988-89 secretarial unit work calendar would be controlled by the then-pending arbitration award over 1987-88 calendar. Panos' statement is corroborated by the Superintendent's reasons for denying Truex's grievance on September 15, 1988 (see finding 17). Having agreed to merge her grievance into the pending decision on the 1987-88 calendar, Truex cannot complain that the MRTA unlawfully refused to proceed to arbitration over 1988-89 calendar. Accordingly, I grant the motion on the allegation that the MRTA unlawfully refused to arbitrate the 1988-89 calendar grievance.

Finally, I deny the motion concerning the allegations that the MRTA unlawfully omitted to petition the Governor and legislature to increase health care benefits of retired support staff and unlawfully scheduled unit membership meetings at times the secretarial employees were unable to attend. When read in light of alleged MRTA threats against the secretarial unit (see findings

22-24), I find that material issues fact about MRTA's motives for its acts or omissions require that a plenary hearing be conducted.

A hearing is also appropriate on her unrebutted allegation that the MRTA unlawfully refused to respond to her request for an explanation why the secretarial unit was not included in a grievance arbitration resulting in a January 1989 award granting teachers extra pay for time worked on snow make-up days.

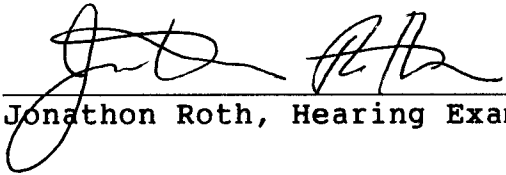
CONCLUSION

I grant MRTA's motion for summary judgment on Truex's original charge, those portions of her January 17, 1989 amended charge alleging that MRTA did not respond to her questions about its efforts to consult over the 1988-89 calendar and its refusal to arbitrate her grievance protesting changes in the calendar.

I deny the motion on portions of the amended charge alleging that the MRTA unlawfully refused to consult with the Board over the 1988-89 calendar; that it unlawfully failed to petition the legislature for benefits for retired support staff; and that the MRTA improperly scheduled secretarial unit meetings at times it knew the employees were unavailable. I also deny the motion on those allegations contained in Truex's February 27, 1989 "rider" to the amended charge.

ORDER

Accordingly, I ORDER that a HEARING take place on the remaining issues at the Commission offices in Trenton, New Jersey, on August 17, 1989, at 9:30 a.m.



Jonathon Roth, Hearing Examiner

DATED: July 17, 1989
Trenton, New Jersey