

P.E.R.C. NO. 93-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-93-13

JOANNE GROMPONE,

Charging Party.

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-93-35

JOANNE GROMPONE,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains a decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge filed by Joanne Grompone against the Jersey City Education Association and the Jersey City Board of Education. The allegations against the Board concern an alleged breach of contract. The allegations against the Association, even if true, do not indicate that the Association breached its duty to represent the charging party fairly.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-93-13

JOANNE GROMPONE,

Charging Party.

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-93-35

JOANNE GROMPONE,

Charging Party.

Appearances:

For the Respondent Association, Feintuch, Prowich &
Feintuch, attorneys (Philip P. Feintuch, of counsel)

For the Respondent Board, Dr. Elena Scambio, superintendent

For the Charging Party, Joanne Grompone, pro se

DECISION AND ORDER

On July 31, 1992, Joanne Grompone filed an unfair practice charge against the Jersey City Education Association. The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1) and (5),^{1/} by refusing to

^{1/} 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. (5) Violating any of the rules and regulations established by the commission."

respond to the charging party's requests for information about how to receive payment for accumulated sick leave.

On October 26, 1992, the charging party filed a charge against the Board. That charge alleges that the Board violated subsections 5.4(a)(4) and (7) of the Act,^{2/} by failing to pay her accumulated sick leave due under the collective negotiations agreement between the Board and the Association.

On December 23, 1992, the Director of Unfair Practices advised the charging party that he was inclined to dismiss the charge against the Association because it was untimely and the charge against the Board because it was a contractual claim. In response, the charging party amended both charges on January 4, 1993. The amendments assert that the Association acted in bad faith by continually refusing to provide her with information about the contractual provision on accumulated sick leave. She asserts that the Board acted in bad faith by miscalculating monies paid to her and by refusing to respond to further inquiries.

On January 15, 1993, the Director refused to issue a Complaint. D.U.P. No. 93-23, 19 NJPER ____ (¶____ 1993). He found that the allegations and amended allegations are untimely. He

^{2/} These subsections prohibit public employers, their representatives or agents from: "(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. (7) Violating any of the rules and regulations established by the commission."

further found that the charge against the Board alleges a mere breach of contract that must be resolved through the negotiated grievance procedure.

On January 25 and 28, 1993, the charging party appealed the refusal to issue a Complaint. She claims that her charges were timely filed and that a Complaint should issue.

The charging party's allegations against the Board concern an alleged breach of contract. Any claims under a collective negotiations agreement must be pursued through the negotiated grievance procedure. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

The charging party's allegations against the Association, even if true, do not indicate that the Association breached its duty to represent the charging party fairly. For a union to breach its duty of fair representation, it must act arbitrarily, discriminatorily, or in bad faith. N.J. Turnpike Employees Union, Local No. 194, IFPTE, P.E.R.C. No. 80-38, 5 NJPER 412, 413 (¶10215 1979); see also Vaca v. Sipes, 386 U.S. 171 (1967)

The charge alleges that the charging party contacted the Association's president and asked him to inform her about the procedures for complying with a contractual provision on payment for accumulated sick days. The charge claims that the Association failed to respond and thus to provide service to a member. The charging party attaches her letters to the Association's president and attorney. The attorney's response indicates that since the charging party had retained private counsel and worked out some sort

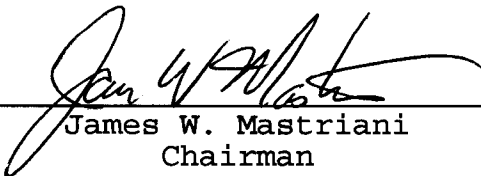
of settlement, the issues of retirement and allowances should have been discussed as part of the settlement. The Association's attorney informed the charging party that if her attorney wished to discuss the matter further, her attorney could contact him.

The January 4 amendment claims that the Association's responses to a series of letters on the same issue constitute bad faith. Included is a letter from the employer that the charging party had received a check from her employer for \$949.18 and that she is owed no further compensation and that the Association had been notified accordingly. Given these allegations and all the supporting documents, we see no facts alleged to support a finding that the Association acted arbitrarily, discriminatorily, or in bad faith. Accordingly, we sustain the decision not to issue a Complaint.

ORDER

The refusal to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: March 29, 1993
Trenton, New Jersey
ISSUED: March 30, 1993