

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CERTIFIED SHORTHAND REPORTERS
ASSOCIATION OF NEW JERSEY and
NEW JERSEY STATE JUDICIARY and
OPEIU, LOCAL 32,

Respondents,

-and-

Docket Nos. CI-96-24
CI-96-25
CI-96-26

JOANNE N. YUHASZ,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands for further processing certain sections of three unfair practice charges filed by Joanne N. Yuhasz against the Certified Shorthand Reporters Association of New Jersey, the New Jersey State Judiciary and OPEIU, Local 32. With respect to the charge against OPEIU, the Commission finds that at this stage of the proceedings it cannot find that the contract provides that the Association can terminate an employee-initiated grievance without consulting the employee. With respect to the charge against the Certified Shorthand Reporters Association, the Commission finds that the charging party's objection to the Director's finding that the Association has not been the her majority representative since June 1994 cannot be resolved without further proceedings. The Commission further finds that because the charges against OPEIU and the Certified Shorthand Reporters Association could lead to finding a violation of the Act by accepting the employer's step 2 grievance decision, the Commission cannot assume that the employer did not violate the Act by refusing to proceed with the charging party's appeal to step 3. The Commission remands sections A through I of the charge against the Judiciary.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 97-137

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Charging Party.

Appearances:

For the Respondent, Certified Shorthand Reporters,
Susan Scardilli, President

For the Respondent, New Jersey State Judiciary, Peter
Verniero, Attorney General (Matthew R. Gabrielson,
Deputy Attorney General)

For the Respondent, OPEIU Local 32, Spear, Wilderman,
Borish, Endy, Spear & Runckel, attorneys
(Samuel L. Spear, of counsel)

For the Charging Party, McKenna & O'Brien, attorneys
(Keith A. McKenna, of counsel)

DECISION AND ORDER

On October 24 and 25, 1996, Joanne N. Yuhasz filed unfair
practice charges against the Certified Shorthand Reporters
Association of New Jersey (CI-96-24), the New Jersey State Judiciary
(CI-96-25), and Local 32, Office and Professional Employees
International Union (CI-96-26).

In CI-96-24 and CI-96-26, the charging party alleges that the Association and Local 32, respectively, breached the duty of fair representation by settling her grievance without consulting her on terms she had rejected; failing to represent her; and colluding with the employer to create a hostile work environment, have her transferred, and discourage her from filing grievances.^{1/}

In CI-96-25, the charging party alleges that the Judiciary violated the Act by accepting Local 32's settlement of her grievance, by transferring her from the Morris vicinage to the Passaic vicinage, and by engaging in a pattern of unfair practices.

On August 19, 1996, the Director of Unfair Practices dismissed CI-96-24, finding the allegations untimely because the Association had not been Yuhasz's majority representative since September 1994. D.U.P. No. 97-14. The Director dismissed CI-96-25, except for the allegation concerning the transfer. He found that the allegations about the settling of her grievance were meritless because the relevant collective negotiations agreement provides that the Association's decision to terminate a grievance at any step shall be final to the interests of the grievant and the Association. He found other allegations untimely, lacking specificity, or insufficient to warrant a

^{1/} The allegations are more fully reported in D.U.P. No. 97-14, 22 NJPER 336 (127175 1996).

Complaint. The Director dismissed CI-96-26, except for the allegations concerning the refusal to process a June 7, 1995 grievance, and the allegation concerning not notifying the charging party or other unit members of a contract change permitting the Judiciary to transfer the charging party. He found that there was no evidence or allegation that Local 32 had breached its duty of fair representation and that other allegations lacked specificity or were untimely.

On September 20, 1996, the charging party filed an appeal.^{2/} She asserts that the Director issued his rulings without affording her the right to a hearing. She further asserts that she was prepared to present evidence that the attorney who represented her, the Association and Local 32 had a conflict of interest with respect to his role in negotiations. Specifically, the charging party asserts that she was prepared to present evidence at hearing that the Association and Local 32 were her majority representatives until June 1995, at which time Local 32 assumed sole responsibility. She asserts that because of a conflict of interest between her and her majority representative, she had an independent right to pursue her grievance contesting the transfer.

^{2/} Under N.J.A.C. 19:14-2.3(c), a refusal to issue a Complaint on a portion of a charge may not be appealed except by special permission to appeal. We grant special permission on CI-96-25 and CI-96-26. Because CI-96-24 was dismissed in its entirety, the charging party can appeal the dismissal as of right. N.J.A.C. 19:14-2.3(b). We deny the charging party's request for oral argument.

On December 19, 1996, Local 32 filed a response urging denial of the appeal.^{3/} On December 20, the Judiciary filed a response. It asserts that the charging party is not entitled to a hearing and that the allegation raised in the appeal about a conflict of interest was not pled and is time-barred.

CI-96-26

The charging party alleges that Local 32 breached its duty of fair representation by accepting the employer's step 2 grievance decision after she had rejected it and without consulting with her. The Director relied on a portion of the grievance procedure to find that the Association had a right to settle the charging party's grievance. The relevant portion of the provision states that "[t]he employee or the Association's decision to terminate a grievance at any step shall be final to the interests of the grievant and the Association." But another portion of the grievance procedure provides that an employee may pursue a grievance without Association representation, provided that the Association may attend as an observer and shall be given a copy of the final decision. Given these provisions, we are not prepared, at this stage of the proceedings, to find that the contract provides that the Association can terminate an employee-initiated grievance without consulting the employee. Accordingly, sections A through

^{3/} Because of a problem with service of the appeal, the time for filing responses was extended.

H should not be dismissed. The charging party has not appealed the Director's remaining dismissals on specificity grounds and we will not disturb those rulings.

CI-96-24

The Director's decision does not articulate the basis for finding that the Association has not been the charging party's majority representative since June 1994. The charging party contests that finding and it cannot be resolved without further proceedings. For the reasons expressed in the portions of the Director's decision and this decision concerning CI-96-26, we remand sections A through H for further processing and dismiss all other portions of the charge except sections I(3)(h) and I(5)(b).

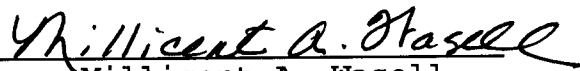
CI-96-25

Because CI-96-24 and CI-96-26 could lead to a finding that the Association or Local 32 violated the Act by accepting the employer's step 2 grievance decision, we cannot assume that, as a matter of law, the employer did not violate the Act by refusing to proceed with the charging party's appeal to step 3. See New Jersey Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp.2d 101 (¶85 App. Div. 1981). Accordingly, sections A through I should not be dismissed. The charging party has not appealed the Director's remaining dismissals on timeliness and specificity grounds or on the ground that she could have unilaterally proceeded to the next step of the grievance procedure. Accordingly, we will not disturb those rulings.

ORDER

CI-96-24 (sections A through H), CI-96-25 (sections A through I) and CI-96-26 (sections A through H) are remanded to the Director of Unfair Practices for further processing consistent with this decision.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz was not present.

DATED: May 29, 1997
Trenton, New Jersey
ISSUED: May 30, 1997