

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOTEL, RESTAURANT & CAFETERIA  
EMPLOYEES UNION LOCAL 3,

Respondent,

-and-

Docket No. CI-2002-32

DIANA KATHY DASENT,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants an appeal of D.U.P. No. 2003-10 and orders the Director of Unfair Practices to issue a Complaint. In that decision, the Director refused to issue a Complaint based on a charge filed by Diana Kathy Dasent against Hotel, Restaurant & Cafeteria Employees Union Local 3. The charge alleges that Local 3 violated the New Jersey Employer-Employee Relations Act when it failed to appeal her termination to the Merit System Board or advise her of her right to appeal on her own. The Commission concludes, given the Complaint issuance standards and the allegations, that it cannot be certain whether the duty of fair representation was breached. The Commission is not deciding at this juncture whether the allegations are true, but remands the matter for the issuance of a Complaint and the development of a record after the Complaint issues. The timeliness of the charge may be contested and determined later based on the record developed after issuance of a Complaint.

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.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOTEL, RESTAURANT & CAFETERIA  
EMPLOYEES UNION LOCAL 3,

Respondent,

-and-

Docket No. CI-2002-32

DIANA KATHY DASENT,

Charging Party.

Appearances:

For the Respondent, Willig, Williams & Davidson,  
Laurence M. Goodman, of counsel

For the Charging Party, John M. Esposito, attorney

DECISION

On January 20, 2004, Diana Kathy Dasent appealed a decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge that Dasent filed against Hotel, Restaurant & Cafeteria Employees Union Local 3. D.U.P. No. 2003-10, 29 NJPER 200 (¶59 2003).<sup>1/</sup> We grant the appeal and order that a Complaint issue.

Dasent filed her charge against Local 3 on January 23, 2002. She alleged that Local 3 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it failed

---

<sup>1/</sup> Dasent first appealed the Director's decision to the Superior Court. Pursuant to a December 18, 2003 order of remand, the charging party was permitted to file this appeal to the Commission under N.J.A.C. 19:14-2.3(b).

to appeal her termination to the Merit System Board ("MSB") or advise her of her right to appeal on her own. By letter dated January 28, the Director requested that Dasent amend her charge to allege when Local 3 allegedly committed its unfair practice.<sup>2/</sup> On February 14, Dasent amended her charge to allege that before consulting with an attorney in December 2001, she was not aware that Local 3 could have taken actions to preserve her right to appeal.

By letter dated December 27, 2002, the Director advised the parties that he did not intend to issue a Complaint and explained why. He provided Dasent with another opportunity to amend her charge. On January 7, 2003, Dasent amended her charge to allege that, after receiving notice of her removal, she asked Local 3 to "take whatever steps were necessary" to challenge her removal and that Local 3 filed a grievance, but did not take any action to file an MSB appeal.

On May 15, 2003, the Director refused to issue a Complaint and dismissed Dasent's charge. He found that the charge was untimely and did not meet the Complaint issuance standard. The appeal to Court and the remand to the Commission ensued.

---

<sup>2/</sup> N.J.S.A. 34:13A-5.4c provides that no Complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of a charge unless the charging party was prevented from filing earlier. N.J.A.C. 19:14-1.3 requires that a charge specify the date the alleged unfair practice occurred.

Dasent alleges that she was terminated from her job as a food service worker with the State-Operated School District of the City of Newark on May 22, 2001; she then asked Local 3 to take whatever steps were necessary to contest her termination; and Local 3 filed a grievance on June 21, 2001, but it did not file an MSB appeal or inform her of her right to file such an appeal. Dasent further alleges that she first learned in December 2001 that Local 3 could have taken actions to protect her right to file an MSB appeal, but by then it was too late. She contends that by filing an ineffectual grievance rather than protecting her right to appeal to the Merit System Board, Local 3 acted in bad faith and prejudiced her. She further contends that Local 3 fraudulently failed to advise her of her right to appeal or the deadline.

A union may commit an unfair practice if it breaches the duty of fair representation. OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983). A breach of that duty occurs when a union's representation of a negotiations unit employee 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).

After an unfair practice charge is filed, a Complaint will issue "if it appears . . . that the allegations of the charge, if true, may constitute unfair practices on the part of the

respondent, and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. . . ." N.J.A.C. 19:14-2.1. Given these standards and the allegations, we cannot be certain whether the duty of fair representation was breached or when Dasent learned of Local 3's alleged breach and therefore whether the charge was timely or untimely. We will therefore remand the case to the Director for the issuance of a Complaint and the development of a record. We are not deciding at this juncture that her allegations are true. The timeliness of the charge may be contested and determined later based on the record developed after a Complaint issues.

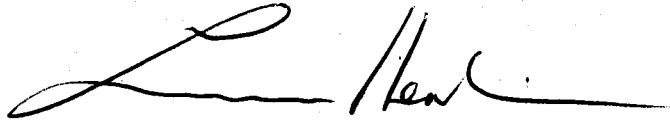
Our decision is based, in part, on finding that the allegations in the charge sufficiently allege a breach of the duty of fair representation to meet the Complaint issuance standard. Carteret Ed. Ass'n (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997), a case Local 3 relies on, is instructive. There, after a Complaint issued and a hearing was held, we concluded that a union did not have a duty to inform an employee that he had a right to file a grievance on his own. We noted, however, that a union cannot impede an employee's right to file a grievance personally. Whether Local 3 "impeded" Dasent's right to file an MSB appeal is a question of fact and law that can only be resolved after a record is developed. The related

question of whether the MSB was the only appropriate forum for review of Dasent's removal can also be considered after a Complaint issues. Our Complaint issuance standard asks only whether the allegations in the charge, if true, may constitute unfair practices. The charge in this case meets that standard.<sup>3/</sup>

ORDER

The Director of Unfair Practices shall issue a Complaint.

BY ORDER OF THE COMMISSION



Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: March 25, 2004  
Trenton, New Jersey  
ISSUED: March 26, 2004

---

<sup>3/</sup> Local 3 notes that the Director's December 27, 2003 letter stated that Dasent's original charge did not specify whether she requested Local 3 to appeal her termination and, if so, when such a request was made. Dasent's amendment specifies that she asked Local 3 to take whatever steps were necessary, but the amendment does not specify the date of her request. If, as Local 3 suggests, Dasent requested help after her MSB appeal deadline had expired, that fact and any legal consequences that might flow from that fact can be developed post-Complaint.