

P.E.R.C. NO. 93-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

PASSAIC COUNTY COMMUNITY COLLEGE
ADMINISTRATORS ASSOCIATION
a/w OPEIU, LOCAL 153,

Respondent,

-and-

Docket No. CI-92-28

RUTH B. WASILEWSKI,

Charging Party.

PASSAIC COUNTY COMMUNITY COLLEGE,

Respondent,

-and-

Docket No. CI-92-34

RUTH B. WASILEWSKI,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the charging party's appeal of a refusal of the Director of Unfair Practices to issue a Complaint against Passaic County Community College. The charging party did not make any timely factual allegations of misconduct rising to the level of an unfair practice. However, the Commission remands the charging party's allegations against the Passaic County Community College Administrators Association a/w OPEIU, Local 153 for the issuance of a Complaint. The Commission is unable to determine, at this stage of the proceedings, that the union's conduct could not have been a breach of its duty of fair representation.

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Appearances:

For the Respondent, OPEIU, Local 153, Schneider, Cohen,
Solomon, Leder & Montalbano, attorneys (Bruce D. Leder, of
counsel)

For the Respondent, Passaic County Community College,
William J. DeMarco, attorney

For the Charging Party, Ruth B. Wasilewski, pro se as to
CI-92-34; Neil H. Deutsch, P.A. (Neil H. Deutsch, of
counsel) as to CI-92-28

DECISION AND ORDER

On November 21, 1991 and January 21, May 27, and July 24,
1992, Ruth Wasilewski filed an unfair practice charge and amendments

against Passaic County Community College. The charge, as amended, alleges that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (4), (5) and (7),^{1/} by improperly discharging her, discriminating against her in employment conditions, interfering with the performance of her job, denying her certain contract benefits and refusing to negotiate with her.

On November 7, 1991 and January 6, May 27, and July 14, 1992, Wasilewski filed an unfair practice charge and amendments against the Passaic County Community College Administrators Association a/w OPEIU, Local 153, alleging that Local 153 violated the Act, specifically subsections 5.4(b)(1), (2), (3), and (5),^{2/}

^{1/} These subsections prohibit public employers, 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) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

^{2/} These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with,

by failing to represent her in grievances and grievance appeals against the College.

On August 19, 1992, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 93-6, 18 NJPER 453 (¶23205 1992). He found that Wasilewski's allegations against the College did not rise to the level of unfair practices; they did not involve reprisals for activity protected by our Act; she did not have standing to allege a refusal to negotiate; they were untimely; and no alleged facts indicated a violation. He found that Wasilewski's allegations against Local 153 did not rise to the level of unfair practices because the union's determination not to pursue an appeal of her discipline did not breach its duty of fair representation.

On September 22, 1992, Wasilewski appealed the dismissal of CI-92-28. She argues that despite her repeated requests, neither the union nor its counsel participated in the contractual appeal of her termination before the College's Board of Trustees. She contends that the union's non-participation caused her appeal to be

2/ Footnote Continued From Previous Page

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. (5) Violating any of the rules and regulations established by the commission."

a meaningless exercise. She argues that the union's grievance committee investigated the merits of her appeal and recommended that it be pursued, but the union "dropped the ball." She urges that reinstatement is neither practical nor desirable and that the only effective remedies are backpay, compensation for benefits lost, and counsel fees. On October 9, 1992, Wasilewski appealed the dismissal in CI-92-34 based on her submissions to the Director.

We deny the appeal in CI-92-34 for the reasons stated by the Director. Wasilewski has not made any timely factual allegations of misconduct against the College that would rise to the level of an unfair practice.

We now deal with the allegations against Local 153. Before April 30, 1991, Wasilewski and her supervising dean had a series of disagreements. On April 30, Wasilewski requested a meeting with the College's interim president to discuss her problems with the dean. That same day, the interim president informed Wasilewski that the Board of Trustees, upon his recommendation, had approved her reappointment for the 1991-92 fiscal year. The reappointment letter indicated that the dean supported that decision. Nevertheless, on May 21, the dean advised Wasilewski that he was recommending her termination for intolerable conduct over the past several months and her continued refusal to correct it.

On June 12, 1991, Local 153's business representative asked the dean for copies of all documents relevant to Wasilewski's notice of termination. On September 11 and 16, Wasilewski was informed

that the president would be recommending her immediate termination to the Board at its September 23 meeting and that she and her counsel were invited. On September 18, Wasilewski informed the president that she would appear at the Board meeting and asked the union to provide a representative and attorney at the meeting.

On September 23, 1991, the union's grievance committee recommended that Wasilewski receive the full legal representation she was entitled to as a union member. That evening, Wasilewski appeared before the Board. According to her attorney, Local 153's business representative, who was present to negotiate a union contract, "merely made a couple of statements in support of her position."

On September 24, 1991, Wasilewski told the union that she wanted her appeal to go forward. On September 26, the president of the Administrator's Association notified the College that Wasilewski would be exercising her contractual right to appeal her termination and that the union attorney would be in contact shortly to schedule a date for the appeal. On October 3, Local 153's business representative wrote to the vice-president of the Administrator's Association enclosing a letter from Local 153's attorney. The attorney's letter explains that: since terminations are excluded from the grievance and arbitration procedure, the ability to challenge any termination is limited to an appeal hearing; statements were made on Wasilewski's behalf at a Board "hearing" on September 23; presumably no letter indicating the College's decision

has been issued; if the College sustains the decision to terminate, no other contractual avenue of appeal exists; there may be statutory grounds for appeal such as the whistleblowers' statute or the anti-discrimination law; and the College might reverse its decision and therefore resolve the dispute. The business representative concluded in his letter to the Association vice-president that "it appears that any further action by the Association would not result in any change in the College's decision."

On October 11 or 12, 1991, Wasilewski was notified by the College of a hearing scheduled for October 14. When she contacted the Association vice-president on October 14, he told her that no help would be given by the union. The charge does not indicate whether the hearing was held or what has happened to Wasilewski's appeal since October 14.

N.J.S.A. 34:13A-5.3 establishes a majority representative's exclusive right to represent unit employees for purposes of collective negotiations. Along with that right comes the responsibility to represent the interests of all employees without discrimination and without regard to employee organization membership. Ibid.; see also Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409 (1970). In considering a majority representative's duty of fair representation with respect to handling grievances, we have applied the standard established for private sector unions in Vaca v. Sipes, 386 U.S. 171 (1967). A union's conduct toward a unit member in deciding whether to process a grievance cannot be arbitrary, discriminatory or in bad faith.

Wasilewski alleges that even though the union's grievance committee recommended that the union represent her in her appeal to the Board of Trustees, the union failed to do so. She is not claiming that the union discriminated or acted in bad faith. But she is claiming, without using Vaca's labels, that the union breached its duty to her by deciding to process her appeal and then failing to do so.

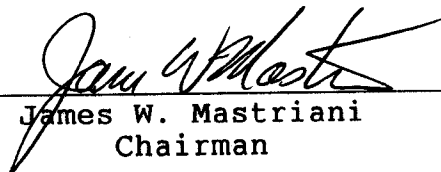
At this stage in the proceedings we do not know all the facts. It appears that the union's business representative believed that Wasilewski's right to appeal was "essentially" exercised at the September 23 Board meeting and that any further action by the union would not result in any change in the College's decision to terminate Wasilewski. However, the College was apparently willing to give Wasilewski a later hearing. From that fact we can infer that the College did not view the September 23 Board meeting as Wasilewski's contractual appeal before the Board. What we do not know is why, in spite of the College's position, the union did not aid Wasilewski in her appeal. The union may have believed that there was nothing it could do to help Wasilewski or it may have simply not factored in the new information that an additional hearing was available. A third possibility is that the Association was informed that the College was willing to entertain Wasilewski's appeal but chose to ignore that fact. Given these possibilities, we are unable to determine, at this stage in the proceedings, that the union's conduct could not have been an unfair practice. Since

N.J.A.C. 19:14-2.1 provides, in part, that a Complaint should issue if it appears that the charging party's allegations, if true, may constitute unfair practices, we remand CI-92-28 for a Complaint and Notice of Hearing to be issued.

ORDER

CI-92-28 is remanded to the Director of Unfair Practices for Complaint issuance. The appeal in CI-92-34 is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: December 17, 1992
Trenton, New Jersey
ISSUED: December 18, 1992