

P.E.R.C. NO. 87-126

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

A.F.S.C.M.E., LOCAL 888,

Respondent,

-and-

Docket No. CI-85-92-49

ISABEL VEGA,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated by the full Commission, dismisses a complaint based on an unfair practice charge filed by Isabel Vega. The charge alleged that AFSCME, Local 888 violated the New Jersey Employer-Employee Relations Act by failing to represent Vega adequately concerning complaints of harassment against her employer, Rutgers University, and by not processing her grievances. The Chairman, in agreement with a Hearing Examiner and in the absence of exceptions, finds that AFSCME did not violate the Act.

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ISABEL VEGA,

Charging Party.

Appearances:

For the Respondent, Richard Gollin, Associate Director

For the Charging Party, Isabel Vega, pro se

DECISION AND ORDER

On February 13, 1985, Isabel Vega ("Vega") filed an unfair practice charge against the American Federation of State, County and Municipal Employees, Local 888 ("Local 888"). The charge alleges that Local 888 violated subsections 5.4(b)(1), (2), (3) and (4)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by failing to represent her adequately concerning her

^{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; (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; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

complaints of harassment against her employer, Rutgers University and by not processing her grievances.

On September 13, 1985, a Complaint and Notice of Hearing issued.

On October 29 and 30, 1985, Hearing Examiner Jonathan Roth conducted a hearing. The parties examined witnesses and introduced exhibits. Vega submitted a post-hearing brief.

On February 2, 1987, the Hearing Examiner recommended the Complaint be dismissed. H.E. No. 87-45, 13 NJPER ____ (¶ ____ 1987). He concluded that Local 888 did not violate its duty of fair representation to Vega.

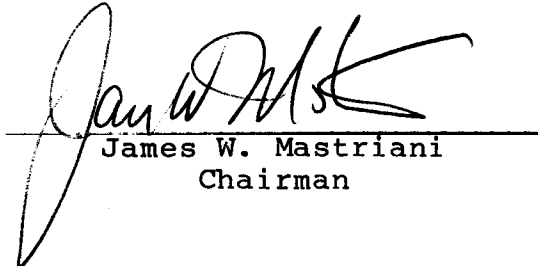
The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before February 17, 1987. Neither party filed exceptions or requested an extension.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-9) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I agree with the Hearing Examiner that the Complaint should be dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 1, 1987

H.E. NO. 87-45

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

In the Matter of

A.F.S.C.M.E., LOCAL 888,

Respondent,

-and-

DOCKET NO. CI-85-92-49

ISABEL VEGA,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss a complaint alleging that AFSCME, Local 88 violated its duty of fair representation by failing to process grievances and fairly represent a unit employee. Charging Party alleged that Local 888 violated subsections 5.4(b)(1), (2), (3) and (4) of the Act. The Hearing Examiner finds that Charging Party failed to sustain its burden of proof and that Local 888 acted reasonably in responding to her complaints about working conditions.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 87-45

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

In the Matter of

A.F.S.C.M.E., LOCAL 888,

Respondent,

-and-

DOCKET NO. CI-85-92-49

ISABEL VEGA,

Charging Party.

Appearances:

For the Respondent
Richard Gollin, Associate Director

For the Charging Party
Isabel Vega, pro se

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On February 13, 1985, Isabel Vega ("Vega" or "Charging Party") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that American Federation of State, County and Municipal Employees, Local 888 ("AFSCME" or "Local 888") had engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(b)(1), (2), (3) and (4).^{1/}

^{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; (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

Footnote Continued on Next Page

Specifically, Charging Party alleged that AFSCME refused to assist her in responding to disciplinary notices she received at the place of her employment, Rutgers, The State University. Furthermore, Vega alleged that AFSCME did not process grievances which she had filed with Rutgers concerning alleged harassment and prejudice.

AFSCME did not file an Answer pursuant to N.J.A.C.
19:14-3.1.^{2/}

On September 13, 1985, a complaint and notice of hearing was issued. On October 29 and 30, 1985, I conducted a hearing in this matter at which time the parties were given an opportunity to introduce evidence, examine and cross-examine witnesses and argue orally. Post hearing briefs were submitted by March 7, 1986.^{3/}

1/ Footnote Continued From Previous Page

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; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

2/ Under some circumstances failure to file an Answer may be grounds for granting a motion for summary judgment, i.e., the facts as stated in the charge would be deemed as true. No motion for summary judgment or motion for directed decision was requested by the Charging Party in this matter. Accordingly, I shall proceed to rule on the case in its entirety.

3/ Charging Party appeared pro se at the hearing. Following the hearing, Charging Party secured the assistance of counsel, and counsel requested an opportunity to review the transcript and prepare a post-hearing brief. I granted the request and Harold Miller, Esq., submitted a brief on behalf of Charging Party on March 7, 1986.

Based upon the entire record I make the following:

FINDINGS OF FACT

1. Local 888, American Federation of State, County and Municipal Employees is a public employee representative within the meaning of the Act and is the majority representative of a unit composed of custodians and other employees employed by Rutgers, The State University.

2. Isabel Vega was a public employee within the meaning of the Act and was employed by the University during the time that the alleged unfair practices occurred.

3. The operative collective negotiations agreement between the University and AFSCME, Local 888 (Exhibit J-1), was effective from July 1, 1983 through June 30, 1986. Article IV of J-1 is identified as the grievance procedure and provides four steps. At step one an employee must present a grievance in writing to the immediate supervisor within ten days after the occurrence of the event out of which the grievance arises. Step two provides that if the employee or the union is not satisfied by the employer's response, the employee or the steward shall forward the written grievance and written answer to the University's Office of Employee Relations, the president of the union and the employee's next level of authority, within two working days after receipt of the written answer. Step three provides that if the employee or the union is not satisfied with the answer at step two, the union shall within three working days following the date of the written answer, submit

to the Office of Employee Relations a written request for a meeting between a representative of the office and a counsel representative of the union. Step four provides that the union may submit the grievance to binding arbitration if a satisfactory decision is not reached at step three.

4. Isabel Vega had been employed by the University as a custodian since 1979. Ms. Vega recalled a series of incidents beginning in 1979 involving harassment by supervisors. She also was transferred from one work location to another in response to various complaints concerning her alleged harassment (TA 13, 17, 23).^{4/} In late December 1982 or in early January 1983, the Charging Party's supervisor was "harassing" her by walking on a floor which she had just cleaned (TA 31). In February 1983, Charging Party sent a letter to president of Local 888, Tony Papi, describing various incidents of harassment by supervisors and/or a foreman. Vega also asserted that co-workers had "sabotaged" her efforts to clean the bathrooms at her assigned work locations (TA 38, 39). Papi responded that Vega should contact shop steward Fred Williams in order to file a grievance at step one (TA 40). Vega spoke with Fred Williams and he arranged a meeting with supervisors Helen Dougherty, Rose Kaplan and Bruce Whitehead. Williams and Papi accompanied Vega to the meeting and represented her at that informal conference.

^{4/} The transcript from October 29 will be referred to as TA, the transcript from October 30 will be referred to as TB.

Vega alleged that at the meeting Williams "sided-up" with the supervisors.

In the absence of any other testimonial and documentary evidence in support of her contentions, I do not credit Vega's testimony that Williams or Papi did anything or said anything at that meeting other than try to informally resolve problems which Vega had at the workplace.

5. On or about May 7, 1984, Vega sent a letter to Michael Lanni, a representative at AFSCME Council 52, concerning her complaints about the level of representation afforded to her by officers of Local 888 (CP-2). Her letter states that she had been mistreated and harassed by immediate superiors and that shop stewards who work for the same employers are not "going to put their salaries in jeopardy for none of the union members like me." Vega also stated that the reason why she was being harassed was because of her age. Lanni arranged a meeting with Vega and representatives of the University approximately two weeks after his receipt of her letter. At the meeting, Vega was informed that if the employees did not wish to retain Tony Papi as Local 888 president, they would have to vote him out of office. No testimony suggested that the meeting had resolved any of the matters which Vega raised in CP-2. Vega had not been reprimanded by the employer before she had mailed CP-2. Following the meeting, Ms. Vega would occasionally "joke" with shop steward Fred Williams that the "union is no good" (TA 79).

6. On or about September 27, 1984, Vega received a copy of a reprimand from supervisor Ben Roman. He wrote that Vega had failed to remain in an assigned work area and that he and Dougherty observed that she was absent. He recommended a suspension (CP-3, TA 86). Vega took the document to shop steward Williams and showed it to him. Williams discussed the incident with Dougherty, Assistant Superintendent of the School Plant. He reported back to Vega that it was a question of "their word against yours" (TA 96, 97). Vega did not recall if Williams suggested any further course of action to her (TA 97).^{5/} On or about October 10, 1984, Vega was issued a typed-written letter outlining in part another reprimand for not being in her assigned building during work hours. The letter was prepared by Susan Rushing, custodial supervisor at the College Avenue Campus. Attached to the letter was a notice of reprimand and another document, CP-3B, detailing a warning to Vega about about the unclean condition of one of her assigned work locations. The warning also stated that the situation had to be corrected in a week or stronger disciplinary action would be taken. The cover letter from Rushing also explained that Vega would serve a three day suspension commencing Octobert 11 for being "out of the assigned area" (CP-3C). No representative of the union was present at the

^{5/} Vega later testified that when she showed Williams CP-3, he "took it as a joke" (TB 42). She also claimed that she did not file a grievance about CP-3 because she did not have the proper forms.

time Vega was presented those documents. Vega testified that she thought that she contacted the union following her suspension. She tried to telephone the shop steward but was unable to reach Fred Williams (TA 117, 118).

Williams was notified of the reprimand and suspension and asked Vega what she wanted done about them. He specifically asked if she wished that he file a grievance on her behalf (TB 82, 83). Vega stated to Williams that she wished to pursue the matter by herself because she did not trust the union representatives to process the matter (TB 83).

Vega secured copies of a grievance form and dictated on them complaints against supervisors Helen Dougherty, Ben Roman, Susan Rushing and a union representative known as "Arnez" (CP-4, CP-5, CP-6, CP-7). Vega mailed all the grievance forms on or about October 10, 1984. She was unclear about whether she mailed the "grievances" separately to the people against whom she was filing them or if she sent copies to the Local 888 president (TA 129, 137; TB 15, 17, 19). Of all the grievances Vega filed, she received one response from Ben Roman, foreman of custodial services at the College Avenue Campus. His written response was undated and stated that "your complaint is not grievable" and "if you wish to pursue the grievance, identify the Article of the collective negotiations agreement you believe was violated" (R-3). Vega did not proceed to step two because she "ran out of forms" (TB 31).

Vega asked Rushing at the time of her suspension for a three month leave of absence because she was ill (TA 117). The record was not clear about what leave she was granted. Vega returned to work for two days after her suspension.

Shop steward Fred Williams credibly asserted that any time Vega had approached him concerning a problem with a term and condition of employment he investigated the basis of her comments by asking other employees and supervisors about alleged harassment (TB 87). He did not discover any basis upon which to process a grievance (TB 89). Williams scheduled meetings with Vega and various supervisors in the fall and winter of 1984 concerning Vega's allegations that supplies were stolen from her closet and that she was not allowed to use a "hot plate at her supply closet" (TB 90). Vega also occasionally complained that a foreman was taking supplies from her assigned closet. Williams explained to her that the foreman was entitled to remove supplies as needed and that the matter was not grievable (TB 94). He personally supplied Ms. Vega with a copy of the collective negotiations agreement in effect during the time of the alleged unfair practices (TB 96).

On November 2, 1984, the supervisor of custodial services sent Vega a notice of termination. The notice stated that Vega failed to return to work on October 16, 1984, following her three day suspension. Vega apparently returned to work on October 17 because the notice also alluded to other incidents on or about

October 17 and 22, 1984 concerning her failure to punch a time card and not remaining in assigned work locations (CP-8).^{6/}

ANAYLSIS

N.J.S.A. 34:13A-5.3 provides in part:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

The U.S. Supreme Court articulated the standard for determining whether a labor organization violated its duty of fair representation in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). In Vaca the Court held:

...a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith. Vaca at 190, 64 LRRM at 2376.

The Commission and courts in New Jersey have embraced the Vaca standard in deciding fair representation cases. See, Saginario v. Attorney General, 87 N.J. 480 (1981); Fair Lawn Board of Education, P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984 ("Fair Lawn")); OPEIU Local 153 (Thomas Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983) ("OPEIU"); City of Union City, P.E.R.C. No. 82-65,

^{6/} Vega's presentation of evidence at the hearing precluded a specifically chronological recitation of facts. The record also reveals her inconsistent testimony (TA 56, 64, 86-90; TB 15, 19), non-responsive testimony (TB 39, 56) and inability to recollect specific sequences of events.

8 NJPER 98 (¶13040 1982) ("Union City"); Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (April 1, 1982), pet. for certif. den. (6/16/82) ("Middlesex County"); N.J. Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) ("Local 194"); AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

A union must conduct some minimal investigation of grievances brought to its attention. NLRB v. American Postal Workers Union, 618 F2d 1249, 103 LRRM 3045 (8th Cir. 1980). The thoroughness with which unions must investigate grievances in order to satisfy the duty varies with the circumstances of each case. Although unions are afforded a reasonable range of discretion in deciding how to handle grievances, union conduct that shows an egregious disregard for the rights of union members [unit employees] constitutes a breach of the duty of fair representation. Tenorio v. NLRB, 680 F2d 598, 110 LRRM 2939 (9th Cir. 1982).^{7/}

Vega reported many of her complaints of "harassment" and "sabotage" to the local president and/or shop steward. Williams credibly testified that he investigated the complaints by interviewing fellow custodians or other employees assigned to Vega's building. He questioned supervisors about the merits of her grievances. He also arranged meetings in 1984 between Vega and

^{7/} See, Lullo v. Int'l Assn. of Firefighters, 55 N.J. 409 (1970), where the New Jersey Supreme Court approved the Commission's use of federal sector precedent in unfair practice litigation.

supervisors Roman, Kaplan, Dougherty and Rushing. He or Papi accompanied Vega at all informal conferences. Furthermore, Williams credibly denied that he uncovered any facts which would properly have been the subject of a contractual grievance. Finally, nothing specifically prohibited Vega from filing a grievance directly with Rutgers throughout 1984 concerning her complaints of harassment (Majority representatives may not have the duty to present every grievance, regardless of how sincerely it opposes that grievance and regardless of how easily the employee may personally present the grievance. Trenton Educational Secretaries Association and Ruby Salter, P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986)). Given that Vega had not yet been disciplined by the University, that she might very well have filed a grievance, and that Williams investigated her complaints and found them either not grievable or only meritorious enough to convene conferences attended by Vega, himself and supervisors with an eye toward informal resolution, I conclude that AFSCME's conduct toward Vega through September 27, 1984 (the date of Vega's first disciplinary notice) was reasonable and well within the parameters set by Vaca, et al.

Vega did not rebut Williams' testimony that he discussed the September 27, 1984 reprimand with Dougherty. Given that her infraction was observed by two supervisors, that the discipline amounted to only a written warning and that the shop steward conferred with Dougherty to ascertain the facts, I find that AFSCME's conduct toward Vega concerning the reprimand did not

violate its duty of fair representation. At worst, Local 888 may have been negligent in not processing a grievance on Vega's behalf. But see, Trenton Educational Secretaries Association.

Vega processed her own series of grievances when she received the October 10 notice of reprimand and suspension. She believed that she tried to contact a Local 888 representative but was unable to reach anyone at the local campus office (TA 118, 120). Williams' testimony is consistent with Vega's actions - when he asked her if she wanted Local 888 to process a grievance, she refused, stating that she did not trust the union. Furthermore, Vega did not contact Local 888 when she received Roman's response to her grievance.

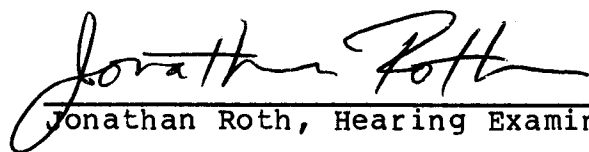
Vega returned to work for about two days following her suspension. On November 2, 1984, Rushing sent Vega a notice of termination, with a copy to Papi, among others. The next time Vega contacted Local 888 was June 1985.^{8/} In view of Williams' credited testimony and Vega's uncertainty about whether she asked a representative of Local 888 to process any October 10 reprimands, I find that Charging Party did not prove that Local 888 violated its duty of fair representation. Finally, Vega did not request that Local 888 take the grievance filed with Roman to step two.

^{8/} The circumstances of Vega's discharge and Local 888's conduct following it were not part of the unfair practice charge. Accordingly, I need not determine if AFSCME fulfilled its duty of fair representation after November 2, 1984.

RECOMMENDATIONS

I recommend that the Commission dismiss the complaint in its entirety.

Respectfully submitted


Jonathan Roth, Hearing Examiner

DATED: February 2, 1987
Trenton, New Jersey