P.E.R.C. NO. 88-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Respondent,

-and- Docket No. CI-86-43-58

THOMAS SEEGER,

Charging Party.

NEW JERSEY TURNPIKE EMPLOYEES UNION, LOCAL 194,

Respondent,

-and- Docket No. CI-86-44-59

THOMAS SEEGERS,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses complaints based on unfair practice charges filed by Thomas Seegers against the New Jersey Turnpike Authority and New Jersey Turnpike Employees Union, Local 194. The charges alleged that the Authority violated the New Jersey Employer-Employee Relations Act when it did not respond to grievances filed by Seegers and that Local 194 violated the Act when it refused to represent Seegers in the grievance procedure concerning Seeger's complaints about the apprenticeship program. The Chairman, in agreement with the Hearing Examiner, and in the absence of exceptions, finds that the complaints should be dismissed.

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NEW JERSEY TURNPIKE EMPLOYEES UNION, LOCAL 194,

Respondent,

-and- Docket No. CI-86-44-59

THOMAS SEEGERS,

Charging Party.

Appearances:

For the Turnpike Authority, Bernard M. Reilly, Esq.

For Local 194, Francis A. Forst, Business Manager

For the Charging Party, Janeczko & Cedzidlo, Esqs. (Mark T. Janeczko, of counsel) and Thomas Seegers, pro se

DECISION AND ORDER

On January 21, 1986, Thomas Seegers filed unfair practice charges against the New Jersey Turnpike Authority and New Jersey Turnpike Employees Union, Local 194 ("Local 194"). The charges allege: (1) the Authority violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically

subsections 5.4(a)(1), (5) and (7),[1/] and the agreement between the Authority and Local 194 when it did not respond to grievances filed by Seegers concerning the Authority, and (2) Local 194 violated the Act when it refused to represent Seegers in the grievance procedure concerning Seegers' complaints about the apprenticeship program.

On November 14, 1986, a Complaint, Notice of Hearing and Order consolidating charges issued. On November 20, both respondents filed Answers. The Authority denies that it failed to respond to Seegers' grievance and further contends that Seegers did not file a timely grievance. Local 194 contends that Seegers did not file a grievance in accordance with the contract and that his grievance is without merit because it seeks to change portions of the apprenticeship program mandated by the federal government.

On June 16 and 17, 1987, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. Seegers also filed a post-hearing brief.

On November 19, 1987, the Hearing Examiner issued his report recommending the Complaint's dismissal. H.E. No. 88-23, 13

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. (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."

NJPER ___ (¶_____ 1987). He first determined that the Authority did not violate the Act: the Apprenticeship Committee considered Seegers' complaints concerning the program and the Authority did not discriminate against him because of this activity. He then determined that Local 194 did not breach its duty of fair representation since it succeeded in getting the Apprenticeship Committee to consider Seegers' complaints.

The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before December 12, 1987. None of the parties filed exceptions.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-17) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated by the full Commission and in the absence of exceptions, I agree that the Complaint should be dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

DATED: Trenton, New Jersey
January 20, 1988

H.E. NO. 88-23

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

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY

Respondent-Public Employer,

-and- Docket No. CI-86-43-58

THOMAS SEEGERS,

Charging Party.

NEW JERSEY TURNPIKE EMPLOYEES UNION
LOCAL 194,

Respondent-Employee Representative,

-and- Docket No. CI-86-44-59

THOMAS SEEGERS,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that neither the New Jersey Turnpike Authority nor the New Jersey Turnpike Employees Union violated the New Jersey Employer-Employee Relations Act by the manner in which they handled a purported grievance filed by employee Thomas Seegers. The Hearing Examiner found that the Authority took no action against the Charging Party because of the exercise of his protected activity and that the Union did not violate its duty of fair representation.

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. 88-23

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

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY

Respondent-Public Employer,

-and- Docket No. CI-86-43-58

THOMAS SEEGERS,

Charging Party.

NEW JERSEY TURNPIKE EMPLOYEES UNION
LOCAL 194,

Respondent-Employee Representative,

-and- Docket No. CI-86-44-59

THOMAS SEEGERS,

Charging Party.

Appearances:

For the Respondent-Public Employer
Bernard M. Reilly, Esq.

For the Respondent-Employee Representative
Francis A. Forst, Business Manager

For the Charging Party, Janeczko & Cedzidlo, Esqs.
(Mark T. Janeczko, of Counsel, at hearing
Thomas Seegers, pro se, on the Brief)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

Unfair Practice Charges were filed with the Public Employment Relations Commission ("Commission") on January 21, 1986 by Thomas Seegers ("Charging Party") alleging that the New Jersey

Turnpike Authority ("Authority") and the New Jersey Turnpike Employees Union, Local 194 ("Union") violated the New Jersey Employer-Employee Relations Act, N.J.S.A . 34:13A-1 et seq. ("Act"). The Charging Party alleged in CI-86-43-38 that the Authority violated subsections 5.4(a)(1), (3) and (7) of the Act by failing to address his grievances set forth in a letter of July 24, 1985, and by failing to comply with Article 16, the grievance procedure of the Authority's and Union's collective agreement.[1/] The Charging Party alleged that the Union violated subsections 5.4(b)(1) and (5) of the Act by refusing to represent him regarding a grievance concerning an apprenticeship program.[2/]

A Complaint and Notice of Hearing and Order Consolidating Cases (C-1) was issued on November 14, 1986. Both Respondents filed Answers by November 20, 1986 (C-2, C-3). The Authority denied violating the Act and argued that Seegers never filed a grievance, but that if he did, it was out of time and not over a grievable

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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; (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; (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, 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."

matter. The Union also denied violating the Act and similarly argued that Seegers did not file a grievance.

Seegers had entered an apprenticeship program to be trained as a carpenter for the Authority . An issue arose regarding that program and Seegers wanted to file a grievance regarding that issue. He prepared a document purported to be a grievance, but the Authority and Union argued it was not a grievance and not properly filed. The Authority also argued that a subsequent grievance was untimely, and Seegers contended that the subsequent grievance was out of time because the Union failed to assist him in filing that grievance.

Hearings were held in these matters on June 16 and 17, 1987.[3/]* The Charging Party filed a post-hearing brief on October 22, 1987.

Based upon the entire record I make the following:

Findings of Fact

1. The Authority is a public employer and the Union is an employee representative within the meaning of the Act. Thomas Seegers is a public employee within the meaning of the Act.

2. Thomas Seegers has been employed by the Authority as a toll collector for five years (TA27). In 1983 there was a posting for Authority employees who were interested in participating in an Apprenticeship Program which would train toll collectors for craft

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3/ The transcript from June 16 will be referred to as TA, the transcript from June 17 will be referred to as TB.

positions (TA27). Seegers was interested in the Program in order to become a carpenter, and signed an apprenticeship agreement (CP-1) on April 11, 1984. That agreement indicated that the length of the apprenticeship would be four years. Exhibit CP-1 was signed by Authority and Union representatives, and by a representative of the U. S. Department of Labor. The Program included a period of classroom instruction and a period of on the job training before it was completed. Item 29 on the back of CP-1 provided that a certificate of completion would be issued by the U.S. Department of Labor upon the completion of the Program. Item 30 provided for modifications of standards and indicated that: "Apprentices employed before such modification shall not be affected without their consent."

Seegers enrolled in Bergen County Vocational and Technical School and completed 160 hours of training and received a certification of completion from the school in May 1985 (TA31-TA33). Shortly thereafter he asked when he would begin his on-the-job training as a carpenter, and he was informed that he had to first complete 75% of the schooling which would be after three years of the Program (TA33).

3. When the Apprenticeship Program was developed an Apprenticeship Committee ("Committee") was established to oversee it. The Committee is comprised of eight people, six appointed by the Authority and two by the Union (TA136-TA137; CP-5). Richard Walley, Manager of Administration for the Maintenance Department,

was Chairman of the Committee, Lawrence Bruno, Superintendent of Buildings, was another Authority member on the Committee, and Domenick Grasso and Travis Fryzowicz were the Union appointees to the Committee. Pursuant to the Authority's and Union's collective agreement (J-1), the Committee was given the authority to direct the Program. Article 12, Sec. B(5) provides:

> There shall be an Apprentice Program in the Maintenance Department, which will provide a combination of educational and on-the-job training by means of which employees can achieve placement on Promotional Lists for Trades and Technicians. This program will be under the direction of an "Apprentice Program Review Committee," consisting of representatives of the Authority and the Union. The Committee shall be empowered to adopt rules and procedures for the program's operation. Rules and procedures adopted by the Committee may waive, modify, or substitute for requirements otherwise needed to achieve promotional levels for Trades and Technicians.

In early June 1985 Seegers asked Bruno and Walley when he would start his training and they told him not until after completing 75% of his schooling (TA35-TA36). Walley told Seegers that some changes had been made in the original Program (TA36).

As a result of Seegers' concerns about the changes to the program a meeting was held on June 20, 1985 with Seegers, Walley, Bruno, Fryzowicz, Grasso, and Mr. Jordan of the New Jersey Department of Labor (RE-2). Seegers discussed all the concerns he had about the Apprenticeship Program and the Committee members tried to reassure him regarding his concerns (TA39). Seegers listed several complaints which are contained in RE-2, the memorandum of that meeting:

1. The Turnpike's program is fraudulent.

2. All aspects were not explained during the initial interview.

3. The Committee was remiss by not having the training standard booklet available during his interview.

4. The standards are misleading and unclear.

5. The program is actually eight years with the O.J.T. portion.

6. There is no guarantee of placement after completion of school.

7. The ratio of apprentices to Journeyman makes it impossible for all apprentices to satisfy the O.J.T. portion of the program.

8. The pay scale on the agreement is inaccurate.

9. The six month probationary period is unfair.

10. The Turnpike invaded his privacy when requesting his attendance and grades from school prior to him receiving payment.

11. He was not informed how the tuition refund program worked.

All of the Committee members present discussed his complaints with him, but Seegers was not satisfied (TB9).

After discussing the matter it became apparent that Seegers still had objections to the Program, and Walley requested that he place his complaints in writing for the entire Committee to review (TA143).FN@Seegers testified that at the June 20 meeting Committee members requested that he put his "grievances" in writing (TA39). I do not credit that testimony. Exhibit RE-2, the minutes of the meeting, show that Seegers was asked to put his "complaints" in writing. It was never suggested that he grieve the matter.@

The pertinent part of RE-2 provides:

> After numerous attempts to fully explain the entire program, from the problems associated with start-up to the long range goals, it appeared that all attempts failed to change Mr. Seegers' feelings that the program is misleading and fraudulent.
>
> The meeting was closed when Mr. Walley requested that Mr. Seegers put his complaints in writing and forward them to Hightstown so that the entire Apprentice Committee could review [sic] at the next regularly scheduled meeting.

4. Exhibit J-1 includes a grievance procedure, Article 16, which culminates in binding arbitration. The first step has two parts. Within five working days of the occurrence of the cause of the complaint the employee must first discuss the grievance or complaint with the immediate supervisor. If the matter is not settled, then, still within the same five days, the employee must place the grievance or complaint in writing "on the appropriate form" and an answer must be made by the supervisor in writing within 24 hours.[4/]

If the matter is not resolved at the first step it will be forwarded to step two, the Labor Relations Committee ("LRC"). The LRC must conduct a hearing within five working days of receipt of the grievance and submit its decision to the Executive Director. Within 15 working days of the hearing the Executive Director will instruct the LRC to advise the grievant as to the decision reached. Either party has 15 days after that decision to request arbitration.

4/ The first step requires talking to the supervisor and putting the grievance in writing both within the 5-day period (TB55-TB56, TB93).

The appropriate form to be used to file a grievance is the employee grievance form (RE-1). That form provides space for step one including space for the statement of the grievance, and space to indicate the remedy or relief sought, and space for the supervisor's response to the grievance. It also provides space for the LRC to issue its decision. At the bottom of RE-1 there is a section on distribution of the grievance and it provides that the LRC, the supervisor, the department head, the Union, and the grievant receive copies of the grievance.

After the meeting of June 20 Seegers tried to obtain a grievance form from assistant shop steward, Daniel Murphy, but Murphy had none (TA40). During the third week of July 1985 Seegers contacted shop steward Tom Stiglic and asked for a grievance form (TA179-TA180). Stiglic had none, but directed Seegers to obtain a form from the Turnpike office at Exit 15W (TA40). However, no forms were available at 15W at that time (TA41). Stiglic was home on a disability leave and did not know how to supply Seegers with a grievance form; thus, he told Seegers to write down all the items he was grieving and send copies to all parties involved (TA179, TA181, TA183). Stiglic told Seegers to send the "grievance" to Walley as Chairman of the Apprentice Committee and not his immediate supervisor because it did not concern the toll collection department (TA186, TA195). Stiglic expected the letter that Seegers intended to prepare to be a grievance, and expected the Authority to make a written response (TA196, TA197).

Seegers knew that grievances were filed on specific forms (TA86). He asked no other Union representative but Stiglic for a form (TA88). He did not know who else to ask (TA89). He also knew about the LRC and that its purpose was to resolve problems (TA81-TA83).

Although Stiglic recommended that Seegers list his grievances in a letter, he (Stiglic) never saw a grievance filed on anything other than a grievance form (TA201). Similarly, Walley, Bruno, and Union President Dino Loretangeli have only seen grievances filed by use of the grievance form, and not by letter (TA152, TA160; TB15, TB31, TB50).

5. By letter of July 24, 1985 (C-1B), addressed to Walley with copies to the Union and the U.S. Department of Labor, Seegers, as a result of the June 20th meeting, listed the complaints or "grievances" he had concerning the Apprenticeship Program. Seegers concluded the letter by asking the Apprenticeship Committee to "consider some changes" in the program. The letter states:

> At my recent meeting with Mr. Richard Walley, Chairman of the Apprenticeship Committee and several other committee members, I was requested to put in writing my grievances.
>
> They are as follows:
>
> 1. At my original interview, I was told that I would periodically spend time in trades. I am now told differently.
>
> 2. The apprenticeship agreement calls for a four year apprenticeship. I am now told that I may never complete my apprenticeship (not in 4 years, maybe not even in 20 years).

3. The committee is taking more apprentices than can be trained. The agreement calls for a 1 to 3 ratio (one apprentice to three journey workers).

4. In accordance with the agreement, we will receive a Certificate of Completion from the United States Department of Labor. Without on the job training, we will never receive this certificate.

5. Under Section VIII, Credit for Previous Experience, credit is to be given for past job experience. Credit was not given me! (I worked for Garden State Paper Company as a mill right.)

6. I am told that there is a 6 month probationary period, to begin with our on the job training. The committee is receiving evaluations from the schools; lengthy probationary period, after 4 years of school, should not be necessary.

7. I requested names of other apprentices, in order, to determine whether or not I was the only employee with such problems. This information was denied me. *** CONSIDER THIS A FORMAL REQUEST FOR SUCH INFORMATION ***

These are just a few of the more serious complaints; I am sure other apprentices have many more. I truly feel that this program is not in the best interest of the employees. I also feel that in its present state there will be more losers than winners. Consider the statement on page 2 of the Apprenticeship and Training Standards: "Management, along with the Union, are sincerely committed to providing a successful program that will enhance the advancement of those Turnpike personnel who so desire to further their goals for promotion."

Please, consider some changes to make this, that successful program.

Exhibit C-1B was the letter Seegers wrote after his discussions with Stiglic, and he (Seegers) intended it to constitute a grievance (TA41). He mailed C-1B to Walley rather than his own supervisor, Angelo Romeo, or the LRC, because the matter concerned the Apprenticeship Program and he considered Walley to be his

supervisor with respect to that Program (TA92, TA94). Seegers expected the Apprenticeship Committee to respond to C-1B in writing within 24 hours as per the grievance procedure, but when it did not, he took no immediate action (TA92, TA97, TA104).

When Walley, Bruno and Loretangeli received C-1B they did not consider it to be a grievance, nor did they expect that Seegers intended it to be a grievance (TA156, TB11-TB12, TB49-TB50). Walley considered C-1B to be Seegers' compliance with his (Walley's) request, as made in RE-2 to put his (Seegers') complaints in writing for review by the whole Committee (TA155). Walley did not consider C-1B to be a grievance because it was not on a grievance form and because it concerned those same complaints about the Program that they had discussed at the June 20th meeting (TA156). After receiving C-1B Walley discussed it at the next meeting of the Apprenticeship Committee (TA141), and the Committee agreed to review all of the complaints in an open meeting with all apprentices (TA144-TA145).

When Bruno received the Union 's copy of C-1B he construed it to be a continuation of the complaints Seegers raised on June 20 (TB10-TB11). He did not consider C-1B to be a grievance since it was not on a grievance form (TB12). Bruno considered Seegers' remarks in C-1B to be asking the Committee to clarify some problems and make some changes (TB12). While the Committee discussed the complaints (TB11), no one presumed that C-1B was a grievance (TB19).

In addition, Bruno did not consider the language in the last two paragraphs of C-1B to be a request for relief as expected to be listed in the remedy section of RE-1. Rather, he considered that language to be an appeal to the Committee to make some changes in the Program (TB28).

Loretangeli never considered C-1B to be a grievance because it was not on a grievance form and because he often received letters from unit members complaining about certain problems, and he assumed that C-1B was such a letter (TB49-TB50). Loretangeli normally investigates such complaints and responds to the individual(s) involved (TB50).

After receipt of C-1B Loretangeli telephoned Walley and discussed C-1B with him. Walley assured Loretangeli that the Committee had reviewed the letter and that it would hold an open meeting in August with all apprentices to review those complaints and others (TB81-TB82).

By letter of July 30, 1985 to Seegers (CP-2), Loretangeli responded to C-1B:

> We are in receipt of a copy of your July 24th letter to the New Jersey Turnpike Authority (specifically to members of the Apprenticeship Committee) listing a number of grievances.
>
> For your information, we are enclosing Supplement #3 of our 1983 proposed contract settlement which was sent to each member at the time of the settlement, before the contract ratification vote. This Supplement outlines the Apprentice Program as a guide to the Committee which had not, as yet, been formed.
>
> While we will not comment on the individual grievances which are for the Committee's purview, we take

> exception to your conclusion "that this program is not in the best interest of the employees." The program is the result of several years of persistence on the part of the Union to provide an avenue for unskilled and semiskilled members to acquire those skills necessary for promotion to crafts and trades which would otherwise be denied them.
>
> This program was negotiated without the assistance of state, federal, or local governments. It is primarily an internal operation of the Authority. Certifications and federal cooperation provide adequate guidelines to insure that the skills acquired by our members are marketable beyond the Authority and not merely tailored to the Turnpike's present needs.
>
> Local 194 is concerned about some delays and shortcomings and has expressed its view to the Management. We have also had representation and input into the decision making process although we obviously do not have control. We are constantly working to seek to improve the program but we have no intention of doing away with it.
>
> We hope that the thrust of your activities are consistent with ours.

Walley, Bruno and Loretangeli also explained that if Seegers wanted to file a grievance regarding the Apprenticeship Committee he should have followed the normal grievance procedure and initiated the grievance with his immediate supervisor and then moved the grievance to the LRC (TA148, TA160-TA161, TB13, TB29-TB30, TB57-TB63, TB94-TB97).[5/] If Seegers had asked Loretangeli for a grievance form one would have been provided (TB105).

5/ Bruno suggested the possibility that a grievance regarding the Apprenticeship Program might go to the Committee at the second step rather than the LRC (TB30). Loretangeli's testimony also reveals that the Committee might be the more appropriate second step for a grievance concerning the Program (TB94-TB97). The disposition of this case, however, does not rest upon what might be the appropriate second step in such a grievance and I make no decision on that issue.

6. On August 26, 1985 an addendum (CP-3) to the apprenticeship training standards was issued converting the original apprentice program to a pre-apprentice program, and indicating that the actual apprentice program would begin with on-the-job training (TA46-TA48). CP-3 was signed by Walley on behalf of the Committee, and by representatives of the State Department of Education and the U. S. Department of Labor, but was not signed by a representative of the Authority or Union. CP-3 had no affect upon the agreement between the Authority and Union regarding the Apprenticeship Program (TA170).

7. On August 29, 1985 a meeting was held by Walley and other Committee members with all apprentices including Seegers, to review Seegers and other apprentices' complaints (TA144-TA145, TA157-TA158). Walley reviewed and responded to all of the complaints Seegers listed in C-1B (TA102-TA103, TA122-TA123, TA144, TA157, TB68, TB75), and he distributed a copy of the Apprenticeship Training Standards book (CP-5) to the apprentices at that time (TA122). But at the conclusion of the meeting Seegers was still not satisfied with the results (TA103-TA106, TA145, TA158). Seegers wanted a written response to C-1B from Walley (TA104, TA123), but received only the oral response at the August meeting (TA105-TA106).

After receiving C-1B Walley informed Loretangeli what was going to take place at the August meeting and Loretangeli decided to attend the meeting to be available to handle any employee complaints (TB50-TB51, TB81-TB82). Subsequent to his receipt of C-1B, but

prior to August 29, Stiglic spoke to Loretangeli regarding Seegers' "grievance." Loretangeli told Stiglic that he was not aware that Seegers had filed a grievance; rather, he knew he had written a letter complaining about the Program, and Loretangeli told Stiglic that the problems would be discussed with Seegers at the August 29 meeting (TB1-TB52).

Loretangeli was in attendance at that meeting when Seegers' complaints or problems were reviewed. Seegers had the opportunity to discuss all of his complaints and I credit Loretangeli's testimony that the meeting was fairly conducted, and that the Committee considered the changes recommended by Seegers, but did not make any of those changes (TB53, TB67, TB68, TB75). Seegers' complaints were discussed at the meeting and he received the Committee's response at that time (TA102, TA106).

Seegers filed the Charges on January 21, 1986. The following day, January 22, Seegers met with Union Business Agent Francis Forst to discuss the Apprenticeship Program because he was hoping to receive moral support from the Union (TA59, TA103). As soon as Seegers was introduced to Forst he (Forst) began yelling at Seegers about how he had never failed to represent anyone, and he called Seegers a derogatory name (TA60). Seegers wanted to ask for the Union's help, but was unable to do so because of Forst's behavior (TA60). At that time Seegers was told that as far as the Union was concerned he had not filed a grievance (TA126). Seegers did not pursue the matter to the membership at that time (TA126).

Shortly after his January 22 meeting with Forst, Seegers learned that the Authority maintained that he had never filed a grievance (TA98-TA99). Seegers did not then file a grievance because he had already filed the Charges (TA99). On August 28, 1986 a Commission staff agent conducted an exploratory conference between the parties in this matter and the Authority representative indicated that the Authority had never received a grievance on a prepared form and was unaware until after the Charges were filed that the Charging Party intended to file a grievance (TA61) In addition, the Union did not issue CP-2 as a confirmation that C-1B was a grievance (TA61).

On September 7, 1986, Seegers filed a grievance (CP-6) setting forth his complaints regarding the Apprenticeship Program. By that time Seegers was a shop steward at 15W (TB109), and he did not request assistance from the Union in processing the grievance (TB109-TB110). There was no change or additional information between late January 1986 and August 1986 to prompt Seegers to file the grievance (TA99). But in August 1986 he filed a grievance to comply with what he thought was the Authority's demand (TA100).

The Labor Relations Committee dismissed the grievance because it was out of time and Seegers did not ask the Union to submit the grievance to binding arbitration (TA100-TA101, TB110).

On October 27, 1986 Seegers filed another grievance with the Authority (CP-7), alleging that the Authority interfered with his taking a course for his Apprenticeship Program. The supervisor and

the Labor Relations Committee denied the grievance. The LRC Committee held that that matter should be directed to the Apprenticeship Committee.

Despite his concerns about the Apprenticeship Program, Seegers has continued in the Program and is entering the fourth year (TA80).

Analysis

Neither the Authority nor the Union violated the Act by the manner in which they handled Seegers' problems or purported grievance. The Authority did not exhibit any anti-union animus toward Seegers regarding his involvement in the Apprentice Program, and the Union did not violate its duty of fair representation regarding the preparation, content or sending of C-1B, CP-6 and CP-7. CI-86-43-58

In order to establish a 5.4(a)(3) violation of the Act a charging party must prove an anti-union motive. Borough of Haddonfield Bd.Ed., P.E.R.C. No. 77-36, 3 NJPER 71 (1977); Cape May City Bd.Ed., P.E.R.C. No. 80-87, 6 NJPER 45 (¶11022 1980). That standard was refined in Bridgewater Twp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984) when the Court held that a charging party must present enough evidence to support an inference that protected activity was a "substantial" or a "motivating" factor in the employer's actions. The charging party must prove that the employer was aware of his exercise of protected activity and that it was hostile toward the exercise of that protected activity.

Bridgewater, 95 N.J. at 246. In order to reach a decision here regarding the Authority's conduct, I must examine what kind of protected activity the Charging Party was engaged in, whether the Authority was aware of that activity, and whether the Authority was hostile toward the exercise of that activity.

Putting aside the question of whether C-1B met the contract definition of a grievance, I, nevertheless, find that Seegers was engaged in the process of filing a grievance in the summer of 1985, and again involved in the process of filing grievances in September and October 1986. Grievance filing is protected activity. Lakewood Bd.Ed., P.E.R.C. No. 79-17, 4 NJPER 459, 461 (¶4208 1978); Dover Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984); Pine Hill Bd.Ed., P.E.R.C. No. 86-126, 12 NJPER 434 (¶17161 1986); Hunterdon Cty. Sheriff, P.E.R.C. No. 87-13, 12 NJPER 685 (¶17259 1986); and State of N.J. (Dept. of Human Services), P.E.R.C. No. 87-88, 13 NJPER 117 (¶18051 1987).

Although Walley and the Committee were aware that Seegers sent C-1B complaining about the Apprentice Program, neither the Committee nor the Authority were aware that C-1B was a grievance; thus, neither entity was aware that Seegers was engaged in that kind of protected activity. On June 20, 1985 Walley asked Seegers to put his complaints in writing. C-1B was Seegers' compliance with that request. If Seegers intended to file a grievance as a result of the June 20th meeting he should have filed it within five days of that meeting in order to comply with Article 16 of J-1. Seegers did not

do so, and he did not even seek Stiglic's assistance in trying to obtain a grievance form until almost a month after the June 20th meeting. In addition, since C-1B was not on an appropriate grievance form there was no way for Walley, the Committee, or the Authority to know that C-1B was intended to be a grievance as opposed to Seegers' compliance with Walley's June 20th request.

Notwithstanding that finding, for purposes of this case I will assume that the Committee and Authority were aware that Seegers was engaged in protected activity. Article I, Paragraph 19 of the New Jersey Constitution (1947) provides that public employees have the right to make known their grievances. Since Seegers intended C-1B to be a grievance, he was exercising his constitutional right.

Since I have found that Seegers was engaged in protected activity, and that the Committee and Authority were aware of that activity, the issue is whether the Authority was hostile toward Seegers because of the exercise of such activity. I find that it was not. In fact, the Authority took no action against Seegers because he filed C-1B, CP-6 or CP-7. He was not reprimanded, disciplined, threatened or coerced in any way because he filed those documents and the Authority did not fail to address the "grievances" listed in C-1B.

To the extent that C-1B was a grievance it only sought as a remedy that the Committee consider changes to the Apprentice Program. On August 29, 1985 the Committee gave Seegers the opportunity to air all of his complaints or grievances, it

considered them, but rejected Seegers' suggestions or recommendations. Nevertheless, the relief sought by Seegers in C-1B was achieved, the Committee considered all of his complaints. If C-1B was a grievance Seegers could have attempted to move the matter to binding arbitration, but he made no such attempt.

The Authority, similarly, took no hostile action toward Seegers for filing CP-6 and CP-7. Those grievances were merely denied for legitimate reasons and Seegers did not attempt to move them to binding arbitration.[6/] Whether CP-6 was out of time or not is not for the Commission to decide; it is a matter for arbitration, I make no finding in that regard. State of N.J. (Dept of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

In his post-hearing brief filed pro se, Seegers argued that his claim of injury continues to exist, that the Authority is not complying with the initial apprenticeship agreement, and that it has improperly changed the Apprenticeship Program. Here Seegers hints to what he is really seeking, a way to force the Authority to change the Apprenticeship Program back to what he believes was the original agreement. But that is not the issue before this Commission. The

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6/ The Charge only alleged that the Authority failed to address the "grievances" in C-1B, it did not contain an allegation that the Authority failed to address the allegations in CP-6 or CP-7. Since no such allegation was plead in the Charge it could not be the basis of a violation here. Nevertheless, to the extent that the factors regarding CP-6 and CP-7 were fully and fairly litigated, Commercial Twp. Bd.Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/83), I find that the Authority took no hostile action against Seegers for filing those grievances.

only issue before the Commission with respect to the Authority is whether the Authority failed to address the "grievances" in C-1B, and whether it was hostile toward Seegers for filing C-1B. The Authority neither failed to address the "grievances" nor was hostile toward Seegers . The matter regarding the changes to the Apprenticeship Program cannot be decided by the Commission in this proceeding. The 5.4(a)(1) and (3) charges should therefore be dismissed.

Since the Charging Party failed to allege or prove that any Commission rule or regulation was violated by the Authority, the 5.4(a)(7) charge should also be dismissed.

CI-86-44-59

The standards for determining whether a labor organization violated its duty of fair representation were established by the United States Supreme Court in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967)("Vaca"). In Vaca the Court held that:

> ...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, discriminatory or in bad faith. 386 U.S. at 190, 64 LRRM at 2376.

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

82-65, 8 NJPER 98 (¶13040 1982); 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); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

The United States Supreme Court also held that to establish a claim of a breach of the duty of fair representation:

> ...carries with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives. Amalgamated Assoc. of Street, Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

In that decision the Court also held that a union is not liable for mere errors in judgment if they were made honestly and in good faith.

Similarly, the National Labor Relations Board has held that where a majority representative exercises its discretion in good faith, proof of mere negligence, standing alone, does not suffice to prove a breach of the duty of fair representation. Service Employees Int'l Union, Local No. 579 AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977); Printing and Graphic Communication, Local 4, 249 NLRB No. 23, 104 LRRM 1050 (1980), reversed on other grounds 110 LRRM 2928 (1982).

In applying the law to this case I find that the Union did not act in an arbitrary, discriminatory or bad faith manner in handling C-1B, nor was Stiglic's recommendation on how to handle the matter more than mere negligence. Loretangeli was not aware

that C-1B was intended to be a grievance, nevertheless, he responded to that letter and appeared at the August 29 meeting to be available to represent the employees and answer any questions. While I find that Stiglic's recommendation to Seegers to file a grievance in letter form was inappropriate and could in some cases be the basis for a violation, since it was done in good faith and was not intended to prevent Seegers from presenting his grievance, it did not rise to the level of a violation of the Act in this case. In fact, through C-1B Seegers was able to accomplish the relief requested therein, to get the Committee to consider changes to the Apprenticeship Program.

In his charge, Seegers alleged only that the Union refused to represent him regarding the grievance about the Apprenticeship Program. That allegation was not supported by the evidence. Seegers sought assistance from his shop stewards and they did not refuse to assist him. Stiglic told Seegers how to proceed, and although Stiglic was wrong, by following his advice Seegers succeeded in getting the Committee to discuss and consider changes to the Program. Seegers did not seek Union assistance to try to move that matter to arbitration.

Although Seegers may not have been satisfied with the Committee's response to his complaints or grievances, Stiglic's assistance did result in having the matter heard. The Union was not required to represent Seegers to his complete satisfaction. See e.g., Ruzicka v. General Motors, 523 F.2d 306, 309-10, 90 LRRM 2497, rehearing den. 528 F.2d 912, 91 LRRM 3054 (6th Cir. 1975);

Farmer v. ARA Services, Inc., 108 LRRM 2145 (6th Cir. 1981). Had Stiglic's assistance to Seegers been merely perfunctory, then it may have been a violation of the Act. Vaca; Ruzicka; Farmer. But his recommendation that Seegers send a letter rather than take time to obtain a grievance form was based upon his concern that the grievance might have been out of time. Stiglic also followed up on Seegers' actions by asking Loretangeli if he had received Seegers' "grievance." Stiglic's actions, combined with Loretangeli's presence at the August 29 meeting, demonstrated more than mere perfunctory assistance by the Union . Similarly, Seegers did not seek assistance in filing CP-6 and CP-7 and did not ask the Union to take those grievances to arbitration. In fact, by that time he too was a shop steward and presumably knew how to move a matter to arbitration. Thus, the specific 5.4(b)(1) allegation in the Charge should be dismissed.

In his post-hearing brief the Charging Party also alleged that the Union violated the Act by not advising him about the apprenticeship agreement and that it could be changed or modified; by not arguing that C-1B or CP-6 was timely filed because the program changes amounted to a "continuing violation"; and by not advising him that he had a right to present his own grievance. Those allegations should also be dismissed. The Charging Party did not plead those allegations in the Charge and cannot raise those items as new allegations in a post-hearing brief.

However, to the extent that the facts surrounding those allegations have been fully and fairly litigated, Commercial Twp., the Charging Party did not prove such violations of the Act. First, absent a request, the Union was not obligated to advise each potential apprentice regarding the legal intricacies of the apprenticeship agreement. The Apprenticeship Program was developed as a benefit to employees as a result of an agreement between the Authority and Union reached through collective negotiations. They created the Apprenticeship Committee to handle the operation of the Program which gave the Committee the authority to make necessary changes in the Program. Seegers, like all apprentices, was a third party beneficiary to J-1 and was, therefore, entitled to participate in that Program. The Program was not a condition of employment, it was a benefit provided to unit members, and participation therein was on a voluntary basis. Under those circumstances, absent an employee's request for Union assistance, the Union was not otherwise obligated to review the apprenticeship agreement with each potential apprentice prior to his or her decision to participate in the Program. Here there was no evidence that Seegers requested Union assistance prior to signing CP-1, or that the Union refused any such request.

The Charging Party relied upon Farmer to prove his point. In that case a union was found to have violated the duty of fair representation when, prior to ratification, it failed to explain contract provisions to unit members. Certain contract provisions

resulted in the transfer of some employees and perpetuated discriminatory conduct by keeping women in a lower compensation bracket. That case is not applicable here. A union is responsible for adequately explaining the terms of a new contract to unit members prior to ratification. But that was not the case here. This case did not arise in the context of ratification. The Apprenticeship Program was a benefit in the collective agreement and if Seegers needed assistance in understanding it he could have asked for it. But the Union was not otherwise expected to discuss it with him prior to his decision to become an apprentice.

Second, the Union was not obligated to argue a continuing violation theory regarding the timeliness of CP-6 (or C-1B). The Authority never argued that C-1B was untimely, only that it was not a grievance, and Seegers did not pursue that issue to arbitration. The Authority did argue that CP-6 was untimely, but Seegers, who was a shop steward at that time, chose to file that grievance himself, and decided not to pursue it to arbitration. The Union was not involved in that process. The decision of whether CP-6 was untimely was for an arbitrator to decide, and since the grievance was not pursued to arbitration there was no reason for the Union to assert a continuing violation theory.

The Charging Party relied upon Trenton Bd.Ed., P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986) to support his contention that arbitrators will treat an act that is repeated from day to day as a continuing violation. Although there is such language in that

decision, 12 NJPER at 530, that case involves a union's refusal to process a grievance. Here, however, the Union never refused to process a grievance, Stiglic assisted Seegers with respect to C-1B, and Seegers, as a shop steward, chose to represent himself in CP-6 and CP-7.

Third, the allegation that the Union did not advise Seegers that he had the right to present his own grievance is without merit. Assuming that C-1B was a grievance, Seegers did, in fact, with Stiglic's assistance, present his own grievance, and did so again with CP-6 and CP-7. His claim that in CP-2 Loretangeli did not "advise him to vigorously proceed on his own" is meaningless. Loretangeli legitimately had no idea that C-1B was a grievance, thus, there was no reason to advise Seegers how to proceed. The presence of the word "grievances" in CP-2 does not signify that Loretangeli knew that C-1B was a grievance. Since Seegers used that word in C-1B, Loretangeli used it in CP-2.

Seegers also relied upon Camden County College, H.E. No. 87-66, 13 NJPER 443 (¶18170 1987) to support his claim. In that case a Hearing Examiner found that a union violated the Act by initially refusing to file a grievance and by failing to advise an employee that he could file a grievance himself. Even had that recommended decision been adopted by the Commission, it would not be applicable here because the Union did not fail or refuse to process Seegers's grievance, and Stiglic did, in fact, assist Seegers in filing it himself. The Commission in Camden County College,

P.E.R.C. No. 88-28, 13 NJPER ___ (¶_____ 1987), however, rejected that recommended decision and concluded that a majority representative is not required to present or file every grievance submitted. Nevertheless, here the Union did not fail to assist Seegers upon his request. Thus, the 5.4(b)(1) allegations raised in the post-hearing brief should also be dismissed.

Since the Charging Party failed to allege or prove that any Commission rule or regulation was violated by the Union, the 5.4(b)(5) charge should be dismissed.

Based upon the entire record and the above analysis I make the following:

Conclusions of Law

Neither the Authority nor the Union violated the cited sections of the Act by the manner in which they handled the purported grievance filed by the Charging Party.

Recommendation

I recommend that the Commission ORDER that the consolidated Complaint be dismissed.

Arnold H. Zudick
Hearing Examiner

Dated: November 19, 1987
Trenton, New Jersey