IN THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-001494-24T4
Civil Action

IN THE MATTER OF

JAMES MACCARTHY,
Appellant and Cross-Respondent (Charging Party Below)

and

EASTAMPTON TOWNSHIP EDUCATION ASSOCIATION,
Respondent and Cross-Appellant (Respondent Below)

On appeal from a Ruling in the December 12, 2024 Decision of the
Public Employment Relations Commission at CI-2023-027

BRIEF OF APPELLANT/CROSS-RESPONDENT JAMES MACCARTHY

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Dated: April 18, 2025

TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

On December 12, 2024, in deciding cross-motions for summary judgment, the Public Employment Relations Commission ("PERC") ruled, among other things, that Respondent, the Eastampton Township Education Association ("ETEA"), did not violate its duty of fair representation by filing workplace discrimination complaints against the Charging Party-Appellant, James MacCarthy—a member of the bargaining unit that it represents—on behalf of another one of the bargaining unit's members. This ruling is found in the Appendix at 12a–14a. It is part of PERC's broader decision regarding the cross-motions for summary judgment, which is found in the Appendix at 1a–18a.

TABLE OF CITATIONS

Cases **Page(s)**

Statutes

PRELIMINARY STATEMENT

The ETEA supplied Mr. MacCarthy's employer with multiple workplace discrimination complaints against him and did so on behalf of another, anonymous member of the bargaining unit that it represents. In taking this approach, the ETEA placed its imprimatur on the complaints and effectively sided with the other member of the bargaining unit against Mr. MacCarthy or, at the least, implied that the complaints were valid. It also set in motion a process through which the employer investigated the complaints to determine if they were substantiated and, if so, whether to impose discipline, which forced Mr. MacCarthy into a defensive posture, to the benefit of the other member of the bargaining unit. The result is that the ETEA did ***not*** treat Mr. MacCarthy and the other member of the bargaining unit fairly and even-handedly. Instead, its conduct towards Mr. MacCarthy was arbitrary and discriminatory, in violation of its duty of fair representation. This Court should reverse PERC's summary judgment ruling to the contrary.

PROCEDURAL HISTORY

On March 2, 2023, Mr. MacCarthy commenced a proceeding in PERC by filing an unfair practice charge against the ETEA. App. 6a. On March 9, 2023, Mr. MacCarthy amended his unfair practice charge. App. 6a. On June 15, 2023, he amended it again. App. 2a. On November 2, 2023, in light of the

second amended charge, PERC's Director of Unfair Practices issued a complaint against the ETEA. App. 3a. On November 13, 2023, the ETEA filed an answer to the complaint. App. 3a.

The second amended charge contains three claims. App. 19a–23a. This appeal pertains to one of those claims. For that claim, Mr. MacCarthy alleges that the ETEA violated its duty of fair representation by filing workplace discrimination complaints against him, on behalf of another, anonymous member of the bargaining unit that it represents. *See* App. 21a–22a.

On September 30, 2024, the parties filed cross-motions for summary judgment on Mr. MacCarthy's claims. App. 2a–3a. On December 12, 2024, PERC decided the cross-motions. App. 1a–17a. In doing so, it assumed that Mr. MacCarthy's allegation regarding the filing of the workplace discrimination complaints is true, but nevertheless concluded that, in filing the complaints, the ETEA did not violate the duty of fair representation. App. 12a–14a. PERC dismissed Mr. MacCarthy's claim to the contrary, along with another one of his claims. App. 12a, 14a. On the third claim, it entered judgment in Mr. MacCarthy's favor. App. 16a.

On January 24, 2025, Mr. MacCarthy commenced this appeal from PERC's ruling that, when the ETEA filed workplace discrimination complaints

against him and on behalf of another member of the bargaining unit, it did not violate the duty of fair representation. App. 224a–31a.

CONCISE STATEMENT OF FACTS

Mr. MacCarthy is a public-school teacher who, since 2007, has been employed by the Eastampton Township Board of Education ("Board of Education") in Eastampton Township, New Jersey. App. 3a. Throughout that time, Mr. MacCarthy has been a member in good standing of his teachers' union, the ETEA. App. 3a. The ETEA is an "employee representative" within the meaning of the Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 to 34:13A-64. App. 3a. Consistent with Section 5.3 of the Act, N.J.S.A. 34:13A-5.3, the ETEA, for purposes of collective bargaining with the Board of Education, is the exclusive bargaining representative for Mr. MacCarthy and the numerous other classroom teachers who are members of his bargaining unit. App. 3a.

Beginning in September of 2022, the Board of Education informed Mr. MacCarthy that it had received anonymous complaints against him, alleging sexual harassment. App. 3a–5a, 21a–22a. In its decision, PERC assumed that the ETEA filed those complaints against Mr. MacCarthy and did so on behalf of another one of the members of the bargaining unit, who wished to remain anonymous. App. 12a–14a. The Board of Education investigated the

complaints and, in at least one instance, its investigation included an "investigatory interview" that Mr. MacCarthy was obligated to attend. App. 4a–5a, 21a.

ARGUMENT

I. THE ETEA VIOLATED ITS DUTY OF FAIR REPRESENTATION WHEN IT FILED A WORKPLACE DISCRIMINATION COMPLAINT AGAINST MR. MACCARTHY—A MEMBER OF THE BARGAINING UNIT THAT IT REPRESENTS—ON BEHALF OF ANOTHER MEMBER OF THE BARGAINING UNIT (App. 12a–14a)

A public-sector union like the ETEA does not treat "all involved members fairly" when it files a workplace discrimination complaint against one member of the bargaining unit that it represents (here, Mr. MacCarthy) on behalf of another one. Instead, it acts arbitrarily and discriminatorily, in violation of its duty of fair representation. This Court should reverse PERC's summary judgment ruling to the contrary. *See In the Matter of Cnty. of Essex*, No. A-3809-22, 2024 WL 2010618, at *7 (N.J. Super. Ct. App. Div. May 7, 2024) (discussing review of PERC decisions and stating that "[w]e exercise de novo review of a decision on summary judgment").

In the collective bargaining context, when, as here, a union serves as the exclusive representative of the employees who make up a bargaining unit, it has a duty to fairly represent all of those employees. *Lullo v. Int'l Ass'n of Fire Fighters, Loc. 1066*, 55 N.J. 409, 427–28 (1970); *see also Vaca v. Sipes*, 386

U.S. 171, 177 (1967). A union breaches this duty when its conduct towards a member of the unit is arbitrary, discriminatory, or in bad faith. *See Belen v. Woodbridge Twp. Bd. of Educ.*, 142 N.J. Super. 486, 491 (App. Div. 1976) (quoting *Vaca*, 386 U.S. at 190); *see also Lullo*, 55 N.J. at 427. A breach of the duty of fair representation qualifies as a violation of Section 5.4b(1) of the Act, which prohibits an employee organization from "[i]nterfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act." N.J.S.A. 34:13A-5.4(b)(1). *See D'Arrigo v. N.J. State Bd. of Mediation*, 119 N.J. 74, 79 (1990) (noting that, if an employee organization breaches the duty of fair representation, it is "subject to the charge of an unfair labor practice under N.J.S.A. 34:13A–5.4b").

Here, for purposes of its decision, PERC assumed that the ETEA filed workplace discrimination complaints against Mr. MacCarthy and did so on behalf of another, anonymous member of the bargaining unit that it represents. App. 12a–14a. The complaints were based on allegations about Mr. MacCarthy's workplace behavior and constituted a workplace dispute between two Board of Education employees who were also both members of the same bargaining unit. App. 3a–5a, 21a–22a. PERC concluded that, under these circumstances, the ETEA did not violate the duty of fair representation:

> Where a member seeks assistance or protection from their employee organization with respect to

> employment discrimination or sexual harassment, the organization must treat all involved members fairly. This could include assisting one member in filing a complaint, or filing it on that member's behalf, while also ensuring the accused member was provided with due process. . . .
>
> MacCarthy does not allege any facts showing ETEA acted arbitrarily, discriminatorily or in bad faith even if the organization filed an affirmative action complaint against him on behalf of another member.

App. 13a–14a (internal citation omitted). This reasoning is misplaced.[1]

Contrary to what PERC determined, a union does not "treat all involved members fairly" when it files a workplace discrimination complaint against one member of its bargaining unit on behalf of another one—instead, it acts arbitrarily and discriminatorily, in violation of its duty of fair representation. The reason is that, in filing the complaint, the union effectively picks a side

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[1] Although courts generally afford deference to administrative agency decisions, this Court is "not bound by the agency's interpretation of a statute or its determination of a strictly legal issue." *Burris v. Police Dep't*, 338 N.J. Super. 493, 496 (App. Div. 2001). In this instance, Mr. MacCarthy is not contesting PERC's findings of fact. Rather, this appeal involves strictly legal issues. It involves, in particular, the scope of a judicially-created concept—namely, the duty of fair representation—and an agency's interpretation and application of the judicially-created test for determining a breach of that duty—namely, whether a union's conduct was arbitrary, discriminatory, or in bad faith. *See Belen*, 142 N.J. Super. at 491 (quoting *Vaca*, 386 U.S. at 190). Agencies are not better suited than courts to interpret and apply judicially-created tests. As a result, this Court should not give any deference to PERC's conclusions of law and should review these strictly legal issues *de novo*.

and supports the accusing member (or, at the least, implies that the complaint is valid) and therefore discriminates against the accused member and fails to treat him in an even-handed way. *See Equal Emp. Opportunity Comm'n v. Pipefitters Ass'n Loc. Union 597*, 334 F.3d 656, 661 (7th Cir. 2003) (noting "the awkwardness of asking the union to take sides in a dispute between two employees both of whom it has a statutory duty to represent fairly in any disciplinary proceeding by the employer"). Even if the union provides the accused member with a representative in connection with the complaint, it does so after having already lent its imprimatur to the accusing member's position on the issue.

The union's ***very act*** of filing the complaint, moreover, signals support for one bargaining unit member over the other and sets in motion a process through which the employer investigates the complaint, seeking to determine whether the accusations are meritorious and whether it should impose discipline. The union, as a consequence, forces the accused member into a defensive posture, to the benefit of the accusing member. In this case, for example, the Board of Education investigated the complaints that it received from the ETEA and, in at least one instance, its investigation included an "investigatory interview" that Mr. MacCarthy was obligated to attend. App. 4a–5a, 21a. This approach does not qualify as "treat[ing] all involved

members fairly"—especially when, as here, there is nothing to suggest that the accusing member needed the ETEA's assistance or was incapable of filing the complaint on his or her own.

In support of its ruling, PERC cited *Thorn v. Amalgamated Transit Union*, 305 F.3d 826 (8th Cir. 2002) and noted that, there, the Eight Circuit observed that "[w]hen the employer investigates a sexual harassment claim by one union member against another, the union has a statutory duty to fairly represent both in their disciplinary dealings with the employer." *See* App. 13a (quoting *Thorn*, 305 F.3d at 833). But *Thorn* is inapposite here.

For one, in *Thorn*, the court noted that the plaintiff, who alleged that her co-workers (fellow members of her union) had sexually harassed her, "did not file or attempt to file a grievance request with [the union]." 305 F.3d at 829. Instead, after becoming aware of the allegations, the plaintiff's employer initiated an investigation into the allegations. *Id.* The Eighth Circuit explained that, under those circumstances, the union was obligated to fairly represent both the plaintiff and the accused individuals. Here, by contrast, the ETEA provided Mr. MacCarthy's employer—the Board of Education—with multiple workplace discrimination complaints against him and did so on behalf of another, anonymous member of the bargaining unit that it represents. App 3a–5a, 21a–22a. In other words, the ETEA did not represent members of its

bargaining unit in response to an investigation that the Board of Education commenced on its own or commenced in response to a complaint that someone else filed, but instead took the *very action* that *launched* the investigatory process against one of its own members, on behalf of another one.

Second, in rejecting the contention that, under federal and Minnesota statutory law, a union had an affirmative duty to prevent workplace discrimination, the *Thorn* court stated that "imposing such a duty would place unions in an untenable position whenever one member accused another member of causing the employer to discriminate." 305 F.3d at 832–33; *see also Anjelino v. N.Y. Times Co.*, 200 F.3d 73, 95 (3d Cir. 1999) (concluding that a union is not liable for workplace discrimination unless "the [u]nion *itself* instigated or actively supported" the discriminatory acts) (emphasis in original). Here, by filing workplace discrimination complaints against Mr. MacCarthy on behalf of another one of its bargaining unit members, the ETEA put itself into the very type of "untenable position" that the *Thorn* court described. Indeed, the ETEA affirmatively advanced the other bargaining unit member's cause against Mr. MacCarthy when, as between the two of them, it was supposed to remain neutral and even-handed. Its conduct towards Mr. MacCarthy was arbitrary and discriminatory, in violation of the ETEA's duty of fair representation.

CONCLUSION

PERC erred in ruling that the ETEA did not violate its duty of fair representation by filing workplace discrimination complaints against Mr. MacCarthy—a member of the bargaining unit that it represents—on behalf of another one of the unit's members. This Court should reverse that ruling and remand to PERC for further proceedings on this issue.

Dated: April 18, 2025

Respectfully submitted,

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