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

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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.

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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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RE: **In the Matter of James MacCarthy,**
Appellant/Cross-Respondent -and-
Eastampton Township Education Association,
Respondent/Cross-Appellant;
App. Div. Dkt. No. A-001494-24T4
Agcy. Dkt. No.: CI-2023-027

Dear Ms. Hanley:

The New Jersey Public Employment Relations Commission (PERC or Commission) submits this letter brief pursuant to R. 2:6-4(c) in opposition to James MacCarthy's appeal, and the Eastampton Township Education Association's cross appeal from the Commission's final agency decision dated December 12, 2024. P.E.R.C. No. 2025-21. (Pa2-17).

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PRELIMINARY STATEMENT

PERC's final agency decisoin that the Eastampton Township Education Association (Association) would not commit an unfair practice by filing a sexual harassment complaint with the employer on behalf of one member against another was not arbitrary or capricious. The Association would not have breached its duty of fair representation to Appellant James MacCarthy because its actions were not arbitrary, capricious, or taken in bad faith. This is particularly true in this case, where the Association offer to represent MacCarthy and arranged for legal counsel during the Board's investigation into the allegations against him. Majority representatives routinely balance the needs of members with competing interests, and the actions of the Cross-Appellant Association's were not arbitrary, capricious, or in bad faith. Therefore, MacCarthy's appeal should be dismissed.

PERC's additional finding that the Association committed an unfair practice when it required MacCarthy to withdraw an unfair practice charge he filed in order to run for union Co-President is also supported by the record. The New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq. provides both the statutory right for a public employee to file an unfair practice charge and protects the rights of public employees to "assist" labor organizations. Here, the Association's operational justification that MacCarthy would have a conflict of

interest should he win the election was speculative and resulted in interference with MacCarthy's right to assist his labor organization, including by seeking a leadership position. The Association's cross appeal should likewise be dismissed.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF MATERIAL FACTS[1/]

The Eastampton Township Board of Education (Board) employs Appellant MacCarthy as a teacher, a position he has held since 2007. (Pa3). The Cross Appellant Association is the exclusive majority representative for employees regarding their terms and conditions of employment. (Pa3). MacCarthy has been a member of the Association in good standing for the duration of his employment. (Pa3).

Between September 2022 and the spring 2023, MacCarthy was accused of violating the Board's sexual harassment policy. (Pa3). The Board took no action against MacCarthy as to the first complaint, as he denied any wrongdoing and the complainant remained anonymous. (Pa4). In October 2022, a second complaint was made against MacCarthy. (Pa4). An investigatory interview was scheduled, and the Association arranged for an attorney from the New Jersey Education Association (NJEA) to represent him, as well as informed MacCarthy that he

1/ The procedural history and statement of facts are combined because the facts material to the issues on appeal are largely procedural in nature.

could select any Association representative to take notes during the interview. (Pa4). While MacCarthy had hoped to have Michael Martino, an Association official, represent him, MacCarthy learned that was not an option as Martino was representing the complainant for this incident. (Pa5). The interview took place on October 21, with only the NJEA attorney and MacCarthy, as he did not trust the Association. (Pa5).

On November 30, 2022, MacCarthy learned that an additional complaint was made against him. (Pa5). MacCarthy asserts that the Association itself filed the complaint, although the Association disputes this. (Pa5).

On March 2, 2023, MacCarthy filed an unfair practice charge against the Association. (Pa6). He amended the charge on March 9, 2023. (Pa6). The amended charge alleged that the Association breached its duty of fair representation when it did not provide him with a union representative at the investigatory interview and by filing sexual harassment complaints against him. (Pa6).

On May 8, 2023, MacCarthy sought to run for union Co-President and submitted the proper paperwork for his name to be placed on the ballot. (Pa6). The existing leadership called an emergency committee meeting to discuss

MacCarthy's placement on the ballot. (Pa6). The committee met and produced a letter to Mr. MacCarthy that stated the following:

> We acknowledge the filing on March 9, 2023 of a DFR with PERC against the ETEA and Daniel Wythoff, in particular. Additionally, we acknowledge receipt of your nomination as candidate for co-president of ETEA for a two-year term.
>
> Our ETEA leadership team, made up of Executive Committee members…[and] Association Representatives...met on May 18, 2023. The purpose of this meeting was to discuss a conflict of interest that has been brought to the attention of Michael Martino and Lisa Wood by UniServ.
>
> The conflict of interest arises now that you have submitted your nomination as a candidate for ETEA co-president. Should you win the election, you would be in the position of guiding your own case as the charging party AND the association in defense of the charge. After discussion at this meeting, the Executive Committee members and the [Association Representatives] voted, due to this conflict of interest, to present you with two options:
>
> 1. Drop the DFR against ETEA and Daniel Wythoff, at which point your name will be placed on the ballot.
>
> 2. Continue with the DFR against ETEA and Daniel Wythoff, at which point your name will not be placed on the ballot.
>
> As you are aware, nominations must be finalized by the end of business today due to the recently-passed amendment to the ETEA constitution. Candidates for office will be announced to our members on Monday, May 22,

> 2023. Please let us know your decision by the end of business, 5:00 p.m., today.
>
> (Pa6-7).

MacCarthy declined to make a choice in response to the letter and his name was not placed on the ballot for the election, held on June 6, 2023. (Pa7).

Following the election, MacCarthy filed a second amended charge, contending that the refusal to allow his name on the ballot for an upcoming election was an additional breach of the duty of fair representation that violated section 5.4b(1) of the Act. (Pa2).

The Association answered the second amended complaint. (Pa2). After discovery, the parties filed cross-motions for summary judgment. (Pa2). MacCarthy sought a finding that the Association breached its duty of fair representation when the Association did not provide him with a representative at an investigatory interview, filed a sexual harassment complaint on behalf of another member, and refused to place him on the ballot after he filed the instant charge. (Pa9). The Association sought dismissal of the charge, arguing that it did in fact give MacCarthy the option of selecting a representative for the interview, did not file any complaints with the Board, and that its decision regarding

MacCarthy's eligibility to run for Association co-president was not arbitrary, capricious or in bad faith. (Pa9-10).

The Commission found that a text message chain between the Association president and MacCarthy made clear that the Association was providing him with a representative of his choosing, except for one individual who was assisting the complainant and dismissed that aspect of the charge. (Pa12). This finding is not subject to the instant appeal. (Pa228).

The Commission also determined that there was a factual dispute as to whether the Association actually filed a sexual harassment complaint against MacCarthy. (Pa12). In granting the Association's motion, the Commission viewed the record in the light most favorable to the non-moving party and assumed the Association did file the complaints. (Pa13). The Commission dismissed this charge, finding that a majority representative must represent all parties fairly, including both the complainant and accused where they are both members of the organization. (Pa12). The Commission held that a labor organization can assist one member with the filing of a complaint while simultaneously provide due process protections and representation to another member accused of wrongdoing. (Pa12-13).

On the final claim, the Commission found that the Association's requirement that MacCarthy drop the unfair practice charge in order to be eligible to run for Association co-president violated the act. (Pa14). Public employees have a statutory right to "assist" a labor organization and also have the right file unfair practice charges with PERC. (Pa14). The Commission found, in accordance with its precedent, that a labor organization may not take an adverse action against a member for filing a charge against the organization. (Pa14-15). Since the Association explicitly referenced the unfair practice charge as the reason to prohibit MacCarthy's placement on the ballot, the Commission found that the action "tended to interfere with his protected rights and lacked a legitimate and substantial organizational justification" where it was speculative whether MacCarthy would win the election and pursue the charge after winning the election. (Pa15). Thus, the Commission found the Association's treatment of MacCarthy in this instance to be arbitrary. (Pa15). The instant appeal and cross-appeal ensued. (Pa228; 231).

LEGAL ARGUMENT

Point I: Standard of Review: Was the Commission's Decision Arbitrary or Capricious?

The Commission has "broad authority and wide discretion in a highly specialized area of public life" and is entrusted with deciding cases based upon its "expertise and knowledge of circumstances and dynamics that are typical or unique to the realm of employer-employee relations in the public sector." Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 328 (1989). Judicial review is narrow:

> The matter is simply one as to the reasonableness of a quasi-legislative policy decision by a statutory administrative agency in the area of its duly delegated authority. The role of judicial review in that regard is thoroughly settled. The administrative determination will stand unless it is clearly demonstrated to be arbitrary or capricious.
>
> State v. Professional Ass'n of N.J. Dept. of Ed., 64 N.J. 231, 258-259 (1974).

Appellant MacCarthy's contention that the issue before this Court is strictly legal and that PERC's conclusions of law are not entitled to deference should be rejected. MacCarthy's argument is patently incorrect that since this case was decided on cross-motions for summary judgment, review by this court is not de novo. Morris County Sheriff's Office v. Morris County Policeman's Benevolent

Ass'n, Local 298, 418 N.J. Super. 64, 74 (App. Div. 2011) (applying arbitrary or capricious standard of review to motions for summary judgment decided by PERC). PERC's interpretation of its own statute was not arbitrary or capricious and should be affirmed. 116 N.J. 322.

Point II: It was not arbitrary or capricious for PERC to find that it is not a breach of the duty of fair representation for an employee organization to file a sexual harassment complaint on behalf of one member against another.

In its decision below, PERC relied on the well-settled jurisprudence that establishes a majority representative's duty of fair representation, and what narrow circumstances constitute a breach of said duty. In order to maximize protections provided to public employees, the Act prohibits employers, as well as employee organizations, from "interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act." N.J.S.A. 34:13A-5.4a(1) and b(1). An employee organization violates N.J.S.A. 34:13A-5.4b(1) only when its action tends to interfere with protected rights and lacks a legitimate and substantial organizational justification. FOP, Lodge No. 12 (Colisanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990).

Section 5.3 of the Act empowers an employee organization to negotiate collectively and administer the collective negotiations agreement on behalf of all

unit employees. With that exclusive authority comes the duty to fairly represent all unit employees in negotiations and contract administration. It is well-settled that an employee organization breaches its duty of fair representation when its conduct towards a member is "arbitrary, discriminatory or in bad faith." Lullo v. IAFF, 55 N.J. 409 (1970); D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74, 76 (1990); see also Vaca v. Sipes, 386 U.S. 171 (1967). "The complete satisfaction of all who are represented is hardly to be expected" and "[a] wide range of reasonableness must be allowed a statutory bargaining representative in servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." PBA Local 187, P.E.R.C. No. 2005-78, 31 NJPER 173 (¶70 2005) (citing Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953)).

PERC's determination that an employee organization may file a sexual harassment complaint with an employer on behalf of one member against another member does not violate the Act and was not arbitrary or capricious. The Commission recognized the difficult position an employee organization is in when called upon to represent opposed positions of its members. In balancing its duty of fair representation under these circumstances, the employee organization's actions must not be arbitrary, capricious or in bad faith, which allows for a wide

range of reasonable actions. Cross-Appellant Association did not treat Appellant MacCarthy arbitrarily, capriciously, or with bad faith when it offered him an Association representative and secured an NJEA attorney to represent his interests when facing the Board's investigation. The Association's actions were a reasonable balancing of its duty of fair representation.

The concept that a majority representative must balance the needs of its members when engaging in its representational duties is not a new idea and is contemplated by the Act. This takes many forms, such as balancing the needs of a diverse group of employees when crafting contract proposals, representing multiple employees during investigatory interviews, or choosing which grievances to arbitrate. See N.J.S.A. 34:13A-5.3; -62. So long as the majority representative does not act "arbitrarily, capriciously, or in bad faith" it does not violate the Act.

The Commission also considered the exceptionally strong public policy prohibiting sexual discrimination and harassment in the workplace. See Rodriguez v. Raymours Furniture Co., Inc., 225 N.J. 343, 347 (2016). Just as one employee has the right to dispute disciplinary charges brought against them, another employee has the right to a workplace free from sexual harassment. MacCarthy contends that when a majority representative makes the complaint on behalf of a member, it effectively acts arbitrarily because it "signals support for

one bargaining unit member over the other" and "forces the accused member into a defensive posture." However, each member has the right to be treated fairly (i.e. without that treatment being arbitrary, capricious or in bad faith), not equally. To file a complaint on behalf of one member while simultaneously offering union representation and legal counsel to the accused member does not violate the duty of fair representation. Thus, the Commission's decision in this matter was neither arbitrary or capricious, and should be affirmed.

Point III: The Association interfered with MacCarthy's rights under the Act when it forced him to choose between running for office or withdrawing his unfair practice charge.

PERC's determination that Cross-Appellant Association interfered with Appellant MacCarthy's statutory rights under the Act and violated N.J.S.A. 34:13A-5.4b(1) when it forced MacCarthy to choose between running for office or withdrawing his unfair practice charge was not arbitrary or capricious and should be affirmed.

Employee organizations are prohibited from "interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them under the Act." N.J.S.A. 34:13A-5.4b(1). Among the Act's comprehensive rights afforded to public employees is the right to file an unfair practice charge against an employee organization alleging that it breached its duty of fair representation by taking an

action that was "arbitrary, capricious, or in bad faith." Lullo, 55 N.J. 409; Vaca, 386 U.S. 171. It is undisputed that Appellant MacCarthy filed an unfair practice charge alleging that the Association breached its duty of fair representation by not providing assistance during an investigatory interview.

Another bedrock right provided to public employees is the "right to assist in a labor organization." N.J.S.A. 34:13A-5.3; PBA, Local 334, (citing In re Probation Ass'n (Tortoreto), 442 N.J. Super. 185, 195 (App. Div. 2015). An employee organization's interference with that right is a violation of the N.J.S.A. 34:13A-5.4(b)(1). Id. Here, the sole reason MacCarthy was not permitted to run for Association co-president was because he chose to maintain his unfair practice charge with the Commission. MacCarthy has a clear statutory right to "assist" the Association, and running for elected office[2/] is one form of exercising that right.

However, "the Commission will not intercede in intra-union disputes unless they are connected to allegations that an unfair practice has been committed." PBA, Local 334 (Mendoza), supra, citing NJ State PBA & PBA Local 199 (Rinaldo), P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011); City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 565-66 (¶13260 1982). This matter is outside

2/ The Commission does not take the position that seeking elected office in a union is an unqualified right. The record is clear that MacCarthy was otherwise eligible to run for co-president according to the Association's governing documents and procedures.

the boundaries of an intra-union dispute and within PERC's jurisdiction because the Association's conduct directly concerned the ability of MacCarthy to exercise two well-grounded rights under the Act. By forcing MacCarthy to choose between running for office or withdrawing his unfair practice charge, the Association breached its duty of fair representation and acted "arbitrarily, discriminatorily, or in bad faith."

The Association takes issue with PERC's finding that "[w]hile the ETEA determined that MacCarthy's placement on the ballot would be a conflict of interest should he become Co-President, this organizational justification does not outweigh MacCarthy's right to file the unfair practice charge with this Commission." The analysis makes clear that the Commission found the Association's advanced justification to be undermined by practical alternative actions that were available. While PERC does not endorse any particular action, the Association could have allowed MacCarthy to run for co-president and, had he won the election, required him to withdraw the charge or recuse himself from the matter once he assumed office. Thus, the finding that the Association violated the Act was not arbitrary or capricious and should be affirmed.

CONCLUSION

PERC's decision that the Association did not violate its duty of fair representation when it offered MacCarthy an Association representative and secured an attorney for him in response to sexual harassment charges was neither arbitrary nor capricious and should be affirmed. Moreover, PERC's holding that the Association violated the Act when it forced MacCarthy to choose between running for office or withdrawing an unfair practice charge he filed was also neither arbitrary nor capricious and should be affirmed.

Respectfully submitted,

/s/ William J. Campbell, IV

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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

REPLY BRIEF AND RESPONSE BRIEF OF APPELLANT/CROSS-RESPONDENT JAMES MACCARTHY

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Dated: August 18, 2025

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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. Mr. MacCarthy has appealed from that ruling, which is found at Pa12–15. That ruling is part of PERC's broader decision regarding the cross-motions for summary judgment, which is found at Pa1–18.

In deciding the cross-motions for summary judgment, PERC also ruled, among other things, that the ETEA violated its duty of fair representation by prohibiting Mr. MacCarthy from running to become its co-president for the sole reason that he had filed an unfair practice charge against it. The ETEA has cross-appealed from that ruling, which is found at Pa14–16. That ruling is part of PERC's broader decision regarding the cross-motions for summary judgment, which is found at Pa1–18.

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PRELIMINARY STATEMENT

As the exclusive bargaining representative of Mr. MacCarthy and the numerous other employees who make up his bargaining unit, the ETEA has a duty to fairly represent those employees, meaning that its conduct towards them cannot be arbitrary, discriminatory, or undertaken in bad faith.

The ETEA, however, provided Mr. MacCarthy's employer with multiple workplace discrimination complaints against him and did so on behalf of another, anonymous member of the bargaining unit. The ETEA, as a consequence, placed its imprimatur on the complaints, effectively sided with the other member (or at least implied that the complaints were valid), and prompted the employer to investigate the complaints and determine whether to impose discipline—which forced Mr. MacCarthy into a defensive posture, to the other member's benefit. The ETEA's conduct towards Mr. MacCarthy was therefore arbitrary and discriminatory, in breach of the duty of fair representation. PERC erred when it ruled otherwise.

Faced with this reasoning, the ETEA contends, without any support, that this description of its conduct is "speculat[ive]" and "conclusory." It then mischaracterizes and misapprehends Mr. MacCarthy's arguments in several respects, cites certain principles that are inapposite here, and attempts to

validate its conduct in ways that fall flat. The Court should reject the ETEA's arguments and sustain Mr. MacCarthy's appeal.

The Court, on the other hand, should refuse to sustain the ETEA's appeal. To this end, the ETEA took an adverse action against Mr. MacCarthy in response to the fact that, under the Employer-Employee Relations Act, he was litigating an unfair practice charge against it (including his claim about the anonymous complaints that were filed against him). In particular, because Mr. MacCarthy was prosecuting that charge, the ETEA barred him from running to become its co-president. The ETEA therefore interfered with Mr. MacCarthy's exercise of his rights under the Act. As PERC correctly concluded, the "ETEA's action was arbitrary and thus breached MacCarthy's duty of fair representation."

The ETEA contends that its actions were valid because it had a "legitimate and substantial" organizational justification for them. But its asserted justification—avoiding a potential conflict of interest—is not "legitimate and substantial" because it is rife with speculation and, in any event, involves an objective that the ETEA could have readily accomplished without interfering with Mr. MacCarthy's exercise of his statutory rights.

Perhaps appreciating this point, the ETEA also tries to re-define the rights that Mr. MacCarthy asserts in this context so that it can claim (wrongly)

that they do not even exist. And it contends that the dispute regarding the co-president election is an internal union dispute and that PERC therefore lacked jurisdiction to decide it. In taking that position, however, the ETEA is ignoring that, although the ways in which unions conduct elections are generally considered to be internal union affairs, the Act gives PERC jurisdiction to review them when—as here—they are connected to unfair practices.

The Court should affirm PERC's ruling that, by prohibiting Mr. MacCarthy from running to become its co-president for the sole reason that he filed an unfair practice charge against it, the ETEA violated its duty of fair representation.

PROCEDURAL HISTORY

On March 2, 2023, Mr. MacCarthy commenced a proceeding in PERC, filing an unfair practice charge against the ETEA. Pa6. On March 9, 2023, Mr. MacCarthy amended his unfair practice charge. Pa6. On June 15, 2023, he amended it again. Pa2. On November 2, 2023, in light of the second amended charge, PERC's Director of Unfair Practices issued a complaint against the ETEA. Pa3. On November 13, 2023, the ETEA filed an answer to the complaint. Pa3.

The second amended charge contains three claims. Pa19–23. These cross-appeals involve two of those claims. For the first one, 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* Pa21–22. For the second one, Mr. MacCarthy alleges that the ETEA violated its duty of fair representation by prohibiting him from running to become its co-president for the sole reason that he had filed the other two claims against it. *See* Pa23.

On September 30, 2024, the parties filed cross-motions for summary judgment on Mr. MacCarthy's claims. Pa2–3. On December 12, 2024, PERC decided the cross-motions. Pa1–17. 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. Pa12–14. PERC dismissed Mr. MacCarthy's claim to the contrary. Pa12, 14. On the other hand, PERC issued a summary judgment in Mr. MacCarthy's favor on the claim that the ETEA violated its duty of fair representation by prohibiting him from running to become its co-president on the grounds that had filed the other two claims against it. Pa14–16. PERC concluded that "[t]he ETEA's action was arbitrary and thus breached MacCarthy's duty of fair representation." Pa16.

On January 24, 2025, Mr. MacCarthy commenced an appeal from the first of these rulings. Pa224–31. On February 10, 2025, the ETEA commenced a cross-appeal, challenging the second of these rulings. Da001–06.

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. Pa3. Throughout that time, Mr. MacCarthy has been a member in good standing of his teachers' union, the ETEA. Pa3. 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. Pa3. 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. Pa3.

Beginning in September of 2022, the Board of Education informed Mr. MacCarthy that it had received anonymous complaints against him, alleging sexual harassment. Pa3–5, 21–22. In its decision, PERC assumed that the ETEA filed those complaints against Mr. MacCarthy and did so on behalf of another member of the bargaining unit, who wished to remain anonymous. Pa12–14. 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. Pa4–5, 21.

On May 4, 2023, the ETEA informed its members that it was going to hold an election for a position as its co-president. Pa6. On May 8, 2023, Mr. MacCarthy submitted a letter to the ETEA, nominating himself to run for the position, which was accompanied by proof that his nomination had been seconded by another member. Pa6. On May 19, 2023, the ETEA, acting through its executive committee, sent a letter to Mr. MacCarthy in which it stated that, because he had commenced and was prosecuting litigation against it (including his claim about the anonymous complaints that were filed against him), he had a "conflict of interest" in his role as a candidate for the co-president position. Pa7. The ETEA informed Mr. MacCarthy that he could "drop the DFR [claim] . . . at which point your name will be placed on the ballot" or "continue with the DFR [claim] . . . at which point your name will not be placed on the ballot." Pa7. The ETEA told Mr. MacCarthy to "let us know your decision by the end of business, 5:00 p.m., today." Pa7. Mr. MacCarthy declined to make a choice in response to the letter and, as a result, the ETEA omitted his name from the ballot for the co-president position. Pa7.

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 (Pa12–14)

The ETEA provided Mr. MacCarthy's employer, *i.e.*, 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. As Mr. MacCarthy explains in his opening brief in his appeal (Pb4–10), in taking this approach, the ETEA placed its imprimatur on the complaints and effectively sided with the other member of the bargaining unit or, at the least, implied that the complaints were valid. It also set in motion a process through which the Board of Education 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 ETEA's conduct towards Mr. MacCarthy was therefore ***not*** fair and even-handed, but rather arbitrary and discriminatory, in breach of its duty of fair representation.[1]

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[1] In his opening brief (Pb6 n.1), Mr. MacCarthy explains that his appeal involves the scope of a judicially-created concept—namely, the duty of fair representation—and PERC'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 v. Woodbridge Twp. Bd. of*

The ETEA, in response, says that this description of its conduct is "speculat[ive]" and "conclusory[.]" Brief of Respondent/Cross-Appellant Eastampton Township Education Association ("Db") at 8. But it proffers nothing in support of those assertions—because it cannot do so. The fact is that, by filing workplace discrimination complaints against Mr. MacCarthy on

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Educ., 142 N.J. Super. 486, 491 (App. Div. 1976) (quoting *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)). As Mr. MacCarthy explains (Pb6, n.1), agencies are not better suited than courts to interpret and apply judicially-created tests and, therefore, this Court should not give any deference to PERC's conclusions of law and should review these strictly legal issues *de novo*.

In its brief, PERC does not address this point about judicially-created tests and instead mischaracterizes the argument by stating, incorrectly, that "MacCarthy's argument is patently incorrect that since this case was decided on cross-motions for summary judgment, review by this court is not [sic] de novo." Letter Brief of PERC ("PERCb") at 8. The Court should disregard PERC's mischaracterization of Mr. MacCarthy's argument.

Mr. MacCarthy, moreover, objects to PERC's filing of a brief in his appeal. In the proceeding below, PERC was an adjudicator, tasked with deciding between conflicting private interests in a neutral and un-biased manner. By filing a brief in Mr. MacCarthy's appeal, however, PERC turned itself from a neutral adjudicator into an advocate, aligning itself with the ETEA (and against him) on the issues at hand. In taking this approach, PERC violated Mr. MacCarthy's right to due process of law and procedural fairness generally, as decisions from other states illustrate. *See, e.g., Muench v. Pub. Serv. Comm'n*, 53 N.W.2d 514, 523 (Wis. 1952) (determining that when an agency, acting in judicial capacity, is tasked with deciding between conflicting private interests, it should refrain from taking role as advocate in parallel proceedings because "[s]uch a concept violates our sense of fair play and due process which we believe administrative agencies acting in a quasi-judicial capacity should ever observe").

behalf of another member of the bargaining unit,[2] the ETEA took affirmative steps to advance one member's cause against another one. By definition, therefore, it placed its imprimatur on the complaints and effectively picked sides in the dispute or, if nothing else, implied that the complaints were valid. This point is based ***not*** on "speculation," but rather the necessary implications of an organization's decision to receive complaints from one person and then, acting as that person's representative or agent, file the complaints against another person, to the benefit of the first person and the detriment of the latter. Not to mention that, in this case, the ETEA's filing of the complaints unquestionably launched the Board of Education's investigation, as PERC found, *see* Pa4–5, and therefore forced Mr. MacCarthy into a defensive posture, harming him and benefitting the other member of the bargaining unit. The ETEA does not seriously contend otherwise.

Separately, the ETEA says that the Seventh Circuit's decision in *Equal Employment Opportunity Commission v. Pipefitters Association Local Union 597*, 334 F.3d 656 (7th Cir. 2003), which Mr. MacCarthy cited in his opening brief in his appeal, "assumes what it purports to prove: that ETEA allegedly

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[2] In its decision, PERC assumed that the ETEA filed the complaints against Mr. MacCarthy and did so on behalf of another member of the bargaining unit, who wished to remain anonymous. Pa12–14 .

'took sides' in the present dispute between Mr. MacCarthy and his accuser." 8. But Mr. MacCarthy did not cite *Pipefitters Association* to "prove" that the ETEA took sides here. The ETEA's own conduct in filing the complaints is what proves that point, as explained above. Rather, Mr. MacCarthy cited *Pipefitters Association* to reinforce the principle that a union should not, as here, "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." 334 F.3d at 661.

The ETEA also contends that a union's "taking a side," by itself, does not reflect a breach of the duty of fair representation because "an employee organization may properly determine the relative merits of 'competing' grievances." Db9 n.5 (quoting *Commc'ns Workers of Am., Loc. 1082 & Middlesex Cty. Bd. of Soc. Serv.*, 16 NJPER ¶ 21218 (1990)). But the ETEA did not determine the merits of competing "grievances," which are complaints that employees or their union representatives lodge against their employer and are often based on alleged violations of an applicable collective bargaining agreement. *See, e.g., Grievance*, Black's Law Dictionary (7th ed. 2000). In this case, in fact, there were not competing claims of ***any*** kind, given that Mr. MacCarthy did not present the ETEA with any type of complaint against his employer or the other member of the bargaining unit. Instead, it was ***only*** the

other member of the bargaining unit who presented the ETEA with complaints—namely, workplace discrimination complaints against Mr. MacCarthy. And the ETEA, acting on the other member's behalf, accepted those complaints and then filed them with Mr. MacCarthy's employer. The ETEA therefore acted in a manner that, as to Mr. MacCarthy, was discriminatory and arbitrary.

As Mr. MacCarthy explained in his opening brief in his appeal, this point finds support not only in *Pipefitters Association* (discussed above), but also in *Thorn v. Amalgamated Transit Union*, 305 F.3d 826 (8th Cir. 2002), which is the decision that PERC cited in ruling that the ETEA did not violate the duty of fair representation when it filed workplace discrimination complaints against him. The ETEA stresses that *Thorn* was not "a duty of fair representation case" and instead "involved Title VII and other federal and state discrimination claims." Db9–10. But that factor is not relevant. The point is that, in rejecting the contention that a union had an affirmative, statutorily-derived duty to prevent workplace discrimination, the *Thorn* court explained 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 (emphasis added). Put differently, a union is in an "untenable position" if it inserts itself into an inter-member workplace

discrimination dispute. And, 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—and therefore exposed itself to liability in the duty of fair representation context. The ETEA, in particular, 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.[3]

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[3] In its brief, PERC says that "each member has the right to be treated fairly (*i.e.* without that treatment being arbitrary, capricious or in bad faith), not equally." PERCb12. PERC does not cite any authority in support of this proposition, because there is none. In reality, the standard is not that a union must avoid treating each member in a way that is arbitrary, "capricious," or in bad faith. Rather, the union must avoid treating each member in a way that is arbitrary, "discriminatory," or in bad faith—as PERC itself acknowledges earlier in its brief. *See* PERCb10 ("It is well-settled that an employee organization breaches its duty of fair representation when its conduct towards a member is 'arbitrary, discriminatory or in bad faith.'") (citing *Lullo v. Int'l Ass'n of Fire Fighters, Loc. 1066*, 55 N.J. 409 (1970)). And here, the ETEA treated Mr. MacCarthy in a way that was "discriminatory" (and arbitrary) because, in providing his employer with workplace discrimination complaints against him on behalf of another member of the bargaining unit, it placed its imprimatur on the complaints, effectively sided with the other member, and prompted the employer to investigate the complaints and determine whether to impose discipline against him. Those things harmed Mr. MacCarthy while benefitting the other member. Put differently, instead of treating two similarly-situated bargaining unit members equally, the ETEA treated one member (Mr. MacCarthy) differently—and worse— than the other one.

Trying another approach, the ETEA contends that it did not act arbitrarily, discriminatorily, or in bad faith because it provided Mr. MacCarthy with someone to represent him during the investigatory interviews that flowed from its filing of the workplace discrimination complaints against him. *See* at Db10–11. But what the ETEA fails to appreciate is that, by that point, it had already lent its imprimatur to the complaints by filing them on behalf of the other member of the bargaining unit, and therefore already effectively picked sides in the dispute. By having filed the complaints, moreover, the ETEA had already spurred the Board of Education's investigation and therefore forced Mr. MacCarthy into a defensive posture, to his detriment and the benefit of the other member of the unit. When the ETEA provided Mr. MacCarthy with a representative, it did nothing to change any of those things.[4] And, in any event, as someone who was associated with the ETEA and who was assigned to assist

[4] For the same reason, PERC is misguided in stating that "Cross-Appellant Association did not treat Appellant MacCarthy arbitrarily, capriciously, or with bad faith when it offered him an Association representative and secured an NJEA attorney to represent his interests when facing the Board's investigation." PERCb11. The question is not whether the ETEA acted arbitrarily or discriminatorily at the moment when it provided Mr. MacCarthy with a representative. The question, instead, is whether it acted arbitrarily and discriminatorily when it filed workplace discrimination complaints against him in the *first place*, which is what created the *need* for the representative and otherwise forced him into a defensive posture in a way that harmed him and benefitted the other member of the bargaining unit.

and defend Mr. MacCarthy in connection with complaints that the union itself had endorsed, *see* Pa5, the representative was not a detached and disinterested advocate but rather had a structural conflict of interest from the outset.

All told, the ETEA's conduct towards Mr. MacCarthy was arbitrary and discriminatory, in breach of its duty of fair representation.

II. THE ETEA VIOLATED ITS DUTY OF FAIR REPRESENTATION BY PROHIBITING MR. MACCARTHY FROM RUNNING TO BECOME ITS CO-PRESIDENT FOR THE SOLE REASON THAT HE HAD FILED AN UNFAIR PRACTICE CHARGE AGAINST IT (Pa14–16)

PERC was correct in concluding that the ETEA acted arbitrarily towards Mr. MacCarthy, and therefore breached its duty of fair representation, when it excluded him from the election ballot for the position as its co-president. Indeed, the ETEA omitted Mr. MacCarthy's name from the ballot only because he was prosecuting his unfair practice charge against it. The ETEA therefore interfered with Mr. MacCarthy's exercise of his rights under the Act (namely, his right to file and prosecute his unfair practice charge), which was an arbitrary action, in breach of the duty of fair representation. *See, e.g., Teamsters Loc. Union No. 579 (Chambers & Owen, Inc.)*, 350 NLRB 1166, 1169 (2007) ("Although . . . unions generally enjoy a wide range of reasonableness under the duty of fair representation standard, that range does not extend to conduct that . . . denies to nonmember objectors information

essential to the exercise of their *Beck* and statutory rights. . . . Accordingly, we find that the Union acted arbitrarily in violation of [the statute] and its duty of fair representation . . . .").

As Mr. MacCarthy explains in his opening brief in his appeal (Pb5), a union breaches its duty of fair representation when its conduct towards a member of its bargaining unit is arbitrary, discriminatory, or in bad faith. *See Belen*, 142 N.J. Super. at 491 (quoting *Vaca*, 386 U.S. at 190). A breach of the duty of fair representation qualifies as a violation of Section 5.4(b)(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").

PERC has concluded, correctly, that a union violates Section 5.4(b)(1) when it takes an adverse action against one of its members in retaliation for the member's lawful exercise of his rights under the Act—namely, filing an unfair practice charge against the union. *PBA Loc. 152 (Smith)*, P.E.R.C. No. 99-18, 24 NJPER 450 (¶29208 1998). In *Smith*, the union sought to impose discipline on one of its members for, among other reasons, filing an unfair practice

charge against it. PERC concluded that—regardless of the merits of the other reasons for the proposed discipline—the union cited the unfair practice charge as part of its decision to seek the discipline and therefore its conduct "tended to interfere with [the member's] protected rights and lacked a legitimate and substantial organizational justification." *Id.* at 6.

Here, likewise, the ETEA took an adverse action against Mr. MacCarthy, one of its members, in response to the fact that he was litigating an unfair practice charge against it (including his claim about the anonymous complaints that were filed against him). Pa7. In particular, because Mr. MacCarthy was prosecuting his unfair practice charge, the ETEA omitted his name from the ballot for the position as its co-president. Pa7. Like the union in *Smith*, therefore, the ETEA interfered with Mr. MacCarthy's exercise of his rights under the Act. And, as PERC correctly concluded, the "ETEA's action was arbitrary and thus breached MacCarthy's duty of fair representation." Pa16.

The ETEA contends that, unlike the union in *Smith*, it had "a 'legitimate and substantial organizational justification' . . . for offering Mr. MacCarthy the option of either running for Co-President or continuing with the charge but not both." Db13. The ETEA is wrong.

When it prevented Mr. MacCarthy from running for the co-president position, the ETEA claimed that, in light of his unfair practice charges, he had

a "conflict of interest." Pa7. The ETEA does not even attempt to explain how this purported rationale amounts to a "legitimate and substantial organizational justification." *See generally* Db. The reality is that, as PERC correctly observed, the ETEA's asserted justification "is speculative in two ways: (1) it assumes MacCarthy would win the election and (2) assumes that he would not recuse himself from the matter [*i.e.*, the union's defense to his unfair practice charge] or seek withdrawal of the unfair practice charge after he became Co-President." Pa16 n.3. Given that the ETEA's asserted justification is rife with speculation, it is certainly not "legitimate and substantial."

What is more, PERC previously rejected a union's stated organizational justification for interfering with the statutory rights of its members when alternative means to accomplish that objective were available. In *W.N.Y. Police Supervisory Ass'n (Santa Maria)*, a provision in the union's constitution and bylaws provided that bargaining unit members who became members of the union more than three months after they first became eligible to do so were required to make "back payments" of monthly union dues, extending back to the time when they first could have joined the union. P.E.R.C. No. 89-60, 15 NJPER 21 (¶ 20007 1988). Addressing a challenge to this provision, PERC determined that the back payment requirement interfered with a statutory right

in order to serve an objective that the union could have served without interfering with the right:

> This rule interfered with the charging party's right to refrain from joining [the union] by penalizing him the equivalent of union dues for the period of time he exercised that right. [The union] asserts that the rule is aimed at achieving a legitimate union objective, preventing employees from receiving a large retirement or death benefit without having contributed to the [union]. In fact, [the union]'s retirement benefit structure prorates payment according to length of membership. It could adopt a similar payment schedule for death benefits. [The union] has not proved that its penalty provision was required to pay for those benefits.

Id. at 5.

Here, the ETEA argues that it ***had*** to exclude Mr. MacCarthy from the ballot for the co-president position because, had he won the election, he would have had a conflict of interest regarding his unfair practice charge. Db13, 13 n.9. However, there was another, lawful avenue that the ETEA could have pursued. It could have allowed Mr. MacCarthy to appear on the ballot and then let nature take its course. If Mr. MacCarthy had lost the election, the conflict would not have materialized; if he had won, the ETEA could have required him to recuse himself, in his capacity as a union official, from being involved in his own unfair practice charge against the union. But the ETEA did not take that approach. Instead, it forced Mr. MacCarthy to choose between exercising

his statutory rights and running for the co-president position and, when he declined to make that choice, it barred him from running for the co-president position. The ETEA's asserted justification for its conduct is therefore not only invalid because it is speculative, as explained above, but also because, consistent with PERC's decision in *Santa Maria*, it could have served its objective in a way that did not interfere with Mr. MacCarthy's exercise of his rights under the Act. The consequence is that, in relation to Mr. MacCarthy, the ETEA's conduct was arbitrary and violated the duty of fair representation.

Attempting to sidestep these points, the ETEA claims that "Mr. MacCarthy sought to assert" only one right, which was a right that did not even exist: "[the] right to run for Co-President of the union while litigating an unfair practice charge against the union simultaneously[.]" Db12–13. The ETEA is engaged in semantics. Mr. MacCarthy, in reality, sought to concurrently exercise ***two established***, ***independent*** rights—namely, (i) the right to file and prosecute an unfair practice charge and (ii) the right to run for office within his union—rights that spring from two distinct sources. Mr. MacCarthy's right to file an unfair practice charge against the ETEA comes from the Act, which confers the right upon him as a public employee and member of the applicable bargaining unit. *See* N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-1.1. On the other hand, Mr. MacCarthy's right to run for the co-president position comes from the ETEA's organizational documents

(constitution and bylaws), which confer the right upon him as a union member in good standing. In addressing the interplay between these rights, the ETEA unjustifiably interfered with Mr. MacCarthy's exercise of his statutory right and, in doing so, breached its duty of fair representation.

Separately, the ETEA claims that PERC should not have ruled on this issue "as a jurisdictional matter." Db13. The ETEA claims, in this regard, that its decision to exclude Mr. MacCarthy from the ballot for the co-president position was an "internal dispute" and therefore outside the scope of PERC's jurisdiction. Db13. But what the ETEA overlooks is that, although the ways in which unions conduct elections are generally considered to be internal union affairs, PERC has jurisdiction to review them when they are connected to unfair practices. In other words, "the Commission will not intercede in intra-union disputes ***unless*** they are connected to allegations that an unfair practice has been committed." *PBA, Loc. 334 (Mendoza)*, P.E.R.C. No. 2025-3, 51 NJPER 105 (¶25 2024) (emphasis added); *see also N.J. State PBA & PBA Loc. 199 (Rinaldo)*, P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011). This principle is consistent with the plain language of the Act, which establishes that "[t]he commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above." N.J.S.A. 34:13A-5.4(c).

In this instance, as explained above, the way in which the ETEA conducted its election was, in fact, connected to an unfair practice. In particular, it was only because Mr. MacCarthy was prosecuting his unfair practice charge that the ETEA omitted his name from the ballot for the co-president position. In taking this approach, the ETEA interfered with Mr. MacCarthy's exercise of his rights under the Act (namely, his right to file and prosecute his unfair practice charge) and therefore breached its duty of fair representation, which is itself an unfair practice. PERC therefore had the jurisdiction and authority to rule on this issue.[5] And, in ruling on it, PERC correctly entered summary judgment in Mr. MacCarthy's favor.

CONCLUSION

For the reasons stated above and in the opening brief in Mr. MacCarthy's appeal, PERC erred in ruling that the ETEA did not violate its duty of fair representation by filing workplace discrimination complaints against him—as a member of the bargaining unit that it represents—on behalf of another

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[5] In addressing the jurisdictional issue, the ETEA cites two decisions that stand for the proposition that, as a general matter, PERC lacks jurisdiction over internal union disputes that concern the right to run for and hold union offices. Db13 (citing *State of N.J. (CWA Loc. 1040)*, D.U.P. No. 2000-3, 25 NJPER 390 (¶ 30167 1999) and *Cherry Hill Educ. Ass'n (DeFuria)*, Dkt. No. CI-2024-039 (June 3, 2024)). But those decisions do ***not*** address intra-union disputes that are connected to unfair practices. As a result, they are inapposite here.

member of the unit. This Court should reverse that ruling and remand to PERC for further proceedings on this issue.

For the reasons stated above, PERC was correct in ruling that the ETEA violated its duty of fair representation by prohibiting Mr. MacCarthy from running to become its co-president for the sole reason that he had filed an unfair practice charge against it. The Court should affirm that ruling.

Dated: August 18, 2025

Respectfully submitted,

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IN THE MATTER OF JAMES MacCARTHY,	:	SUPERIOR COURT OF NEW
	:	APPELLATE DIVISION
	:	DOCKET NO. A-001494-24T4
Appellant/Cross-Respondent,	:	
	:	Civil Action
-and-	:	
	:	ON APPEAL FROM THE
EASTAMPTON TOWNSHIP EDUCATION ASSOCIATION,	:	NEW JERSEY PUBLIC EMPLOYMENT RELATIONS
	:	COMMISSION
Respondent/Cross-Appellant.	:	Docket No. CI-2023-027
	:	PERC Decision No. 2025-21

RESPONDENT/CROSS-APPELLANT EASTAMPTON TOWNSHIP EDUCATION ASSOCIATION'S REPLY BRIEF

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PRELIMINARY STATEMENT

A union does not violate its duty to fairly represent a unit member unless it acts arbitrarily, discriminatorily, or in bad faith. Middlesex Cnty., P.E.R.C. No. 81-62, 6 NJPER 555, 557 (¶11282 1981) (quoting Vaca v. Sipes, 386 U.S. 171, 190 (1967)). The New Jersey Public Employment Relations Commission (PERC) correctly concluded in the present case that Appellant/Cross-Respondent James MacCarthy alleged no facts in Count Two of his unfair practice charge that would show his union, Respondent/Cross-Appellant Eastampton Township Education Association (ETEA), acted arbitrarily, discriminatorily, or in bad faith even if ETEA actually filed a harassment complaint against him on behalf of another member, M.H., which ETEA didn't. Mr. MacCarthy claims on appeal that merely by filing the complaints against him, which ETEA didn't, ETEA "by definition" acted arbitrarily, discriminatorily, or in bad faith. Yet Mr. MacCarthy cites no case law under which a union's filing, let alone assisting a member who filed, a harassment complaint against another member is a per se breach of the duty of fair representation; PERC conclusively found that it wasn't.

A union also does not act arbitrarily unless its actions are "so far outside a wide range of reasonableness that [they are] wholly irrational[.]" Marquez v. Screen Actors Guild, Inc., 525 U.S. 33, 45 (1998). (Internal quotations and citation omitted.) PERC erroneously found that ETEA's organizational determination that Mr. MacCarthy could not both run for Co-President of the union and sue the union was arbitrary, erroneously granting Mr. MacCarthy's cross-motion for summary judgment as to Count Three. ETEA's determination could not have been arbitrary unless it was unreasonable or irrational. It was neither. PERC claims that ETEA's decision was "undermined by practical alternative actions that were available" rather than the one

that ETEA chose. But whether a union's action breaches the duty of fair representation does not depend on whether an alternative action is available. A union's action only breaches the duty of fair representation if it is arbitrary, discriminatory, or in bad faith. ETEA's election-related action was none of the above.

We respectfully request that the Court affirm PERC's decision as to Count Two of Mr. MacCarthy's unfair practice charge, reverse PERC's decision as to Count Three, and dismiss the charge in its entirety with prejudice.

LAW & ARGUMENT

I. PERC's conclusion that Mr. MacCarthy alleged no facts in Count Two of the charge showing that ETEA acted arbitrarily, discriminatorily, or in bad faith even if ETEA filed a harassment complaint against him, which ETEA didn't, should be affirmed.

Mr. MacCarthy repeats his prior claims that, by filing harassment complaints with his employer on behalf of another, anonymous member, which ETEA never actually did,[1] ETEA "by definition" "placed its imprimatur on" the complaints,

[1]Mr. MacCarthy claims not only that ETEA filed the harassment complaints against him, which it didn't, but that PERC "assumed" ETEA filed the complaints against him. See, e.g., MacCarthy's Reply Brief at 4, 5, 9 n.2. PERC "assumed" ETEA filed the complaints for purposes of deciding ETEA's cross-motion for summary judgment only. See PERC's Brief at 6 ("In granting [ETEA's cross-]motion, the Commission viewed the record in the light most favorable to the non-moving party and assumed [ETEA] did file the complaints"). Cf. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). PERC otherwise did ***not*** assume ETEA filed the complaints but acknowledged that a "factual dispute" existed as to whether ETEA filed any complaint against Mr. MacCarthy. In the Matter of James MacCarthy and Eastampton Tp. Educ. Ass'n, P.E.R.C. No. 2025-21, 51 NJPER ¶47 (2024) at 12a. See also PERC's Brief at 3 (noting in relevant part that "MacCarthy asserts that [ETEA] itself filed the complaint, although [ETEA] disputes this"). PERC further found that resolution of the "dispute" was not necessary to resolve the charge as even if ETEA filed a complaint against Mr. McCarthy, which it didn't, it would not have

"effectively sided with" the complainant, "implied that the complaints were valid," and "forced [him] into a defensive posture." See MacCarthy's Reply Brief at 7, 9. See also id. at 9 (referring in relevant part to the "necessary implications [sic] of an organization's decision to receive complaints from one person and then...file the complaints against another person"). But these claims remain speculative and conclusory in the absence of any supporting case law. Mr. MacCarthy has provided none.

As PERC has explained, "The concept that a majority representative must balance the needs of its members when engaging in its representational duties is not a new idea...So long as [it] does not act arbitrarily, capriciously, or in bad faith, it does not violate" the New Jersey Employer-Employee Relations Act (EERA or Act). PERC's Brief at 11.[2] (Quotations omitted.) PERC correctly found in the present case

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breached its duty of fair representation with respect to him. See id. at 6; Matter of MacCarthy at 12a-13a.

[2]Mr. MacCarthy objects to PERC's filing a brief in this appeal, purportedly "turn[ing] itself from a neutral adjudicator into an advocate [by] aligning itself with the ETEA (and against him) on the issues at hand." MacCarthy's Reply Brief at 8 n.1. Mr. MacCarthy misses the obvious fact that in New Jersey, the agency is a party—the respondent—to an appeal of a final agency decision. See, e.g., R. 2:5-1(e) (notice of appeal of any agency decision must be served "upon the agency...and all other interested parties"). PERC is a party to this appeal. Even if PERC were not a party, it is unclear how PERC could have "violated Mr. MacCarthy's right to due process of law and procedural fairness generally" [sic] merely by filing a brief in support of a decision it previously issued. MacCarthy's Reply Brief at 8 n.1. "Procedural due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner that is appropriate to the nature of the case." Emri v. Evesham Twp. Bd. of Educ., 327 F. Supp. 2d 463, 472 (D.N.J. 2004). None of the above was denied to Mr. MacCarthy at any stage of this appeal. Mr. MacCarthy's objections to PERC's filing a brief also appear to be limited to Count Two of the unfair practice

that ETEA's actions "in handling a delicate member vs. member issue," such as "assisting one member in filing a complaint...while also ensuring the accused member was provided with due process," fell within the "wide range of reasonableness" that a majority representative must be afforded under existing law. Matter of MacCarthy at 13a (quoting PBA Local 187 (Cipriano), P.E.R.C. No. 2005-78, 31 NJPER 173, 174 (¶70 2005)). PERC correctly rejected Mr. MacCarthy's claim that a union per se breaches the duty of fair representation when the union files a harassment complaint—let alone assists a member who files a harassment complaint, as was the case here—against a member. Id. at 14a.

Mr. MacCarthy also repeats his claims that both E.E.O.C. v. Pipefitters Ass'n Loc. Union 597, 334 F. 3d 656 (7th Cir. 2003), and Thorn v. Amalgamated Transit Union, 305 F.3d 826 (8th Cir. 2002), the case PERC cited, support his unfair practice charge. Neither case does. The Seventh Circuit's dictum in E.E.O.C. about "the awkwardness of asking [a] 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" does not contradict PERC's conclusion that in the present case, there was no evidence that ETEA took sides between Mr. MacCarthy and M.H. or failed to represent Mr. McCarthy fairly during the Eastampton Township Board of Education's investigation process. Id. at 661. Cf. Matter of MacCarthy at 14a. Similarly, the Eighth Circuit's conclusion in Thorn that "imposing upon unions an affirmative duty to investigate and take steps to remedy employer discrimination

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charge (the decision from which Mr. MacCarthy appealed), but not Count Three of the charge (the decision from which ETEA appealed). In other words, PERC can "turn itself from a neutral adjudicator into an advocate" ***on Mr. MacCarthy's behalf***; it merely cannot do so ***on ETEA's behalf***. MacCarthy's Reply Brief at 8 n.1. This is not what "neutrality" means.

[under Title VII and a parallel state anti-discrimination statute]...would place unions in an untenable position whenever one member accused another member of causing the employer to discriminate" does not contradict PERC's conclusion that employee organizations such as ETEA owe a duty of fair representation to every member, including those who seek assistance or protection with respect to workplace harassment, under the EERA. Id. at 832-33. Cf. Matter of MacCarthy at 13a.

Mr. MacCarthy further claims that ETEA has not disproven that its actions with respect to the harassment complaints placed ETEA's imprimatur on the complaints, effectively sided with the complainant, implied that the complaints were valid, and forced Mr. MacCarthy into a defensive posture. See MacCarthy's Reply Brief at 8 ("[ETEA] proffers nothing in support of these assertions—because it cannot do so" [sic]), 9 ("The ETEA does not seriously contend otherwise" [sic]). Mr. MacCarthy reverses the burden of proof. ETEA as the respondent is not required to disprove Mr. MacCarthy's allegations. Mr. MacCarthy as the appellant is required to prove them. He has not done so and cannot do so. PERC's dismissal of Count Two of the unfair practice charge should be affirmed.

II. PERC's erroneous conclusion that ETEA's election-related actions met the narrow standard for arbitrariness should be reversed and Count Three of the charge should be dismissed with prejudice.

PERC erroneously concluded that ETEA's organizational determination that Mr. MacCarthy could not run for Co-President of the union while suing the union was "arbitrary" and breached its duty of fair representation towards him. Matter of MacCarthy at 16a. It wasn't and didn't. A union's conduct is "arbitrary" when it is "so clearly incorrect as to fall outside the range of reasonableness or to be deemed irrational[.]" Cipriano at 175 (quoting Air Line Pilots Ass'n, Intern. v. O'Neill, 499

U.S. 65, 78 (1991)). Here, PERC disagreed with ETEA's decision to make Mr. MacCarthy choose between running for Co-President and continuing with the charge, finding that ETEA's "organizational justification [that Mr. MacCarthy's placement on the ballot would be a conflict of interest should he become Co-President] d[id] not outweigh [his] right to file the unfair practice charge." Matter of MacCarthy at 15a-16a. PERC ***didn't*** find that ETEA's actions were "so clearly incorrect as to fall outside the range of reasonableness or to be deemed irrational." Air Line Pilots Ass'n, supra. They plainly weren't. Nor did PERC dispute that the legal standard for "arbitrary" conduct cited by ETEA was the correct standard.

ETEA's concerns about the consequences of the election were reasonable and clearly articulated. See also 119a (May 19, 2023 letter from ETEA Secretary/Treasurer Lisa A. Wood and Grievance Chair Michael Martino to Mr. MacCarthy, noting in relevant part that "[s]hould you win the election, you would be in the position of guiding your own case as the charging party AND the [A]ssociation in defense of the charge"); PERC's Brief at 4. ETEA's decision was not "arbitrary"; it was merely not the decision that PERC would have made.[3]

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[3]PERC specifically claims that ETEA's decision was "undermined by practical alternative actions that were available," including allowing Mr. MacCarthy to run for Co-President and then requiring him to withdraw the charge or recuse himself from the matter if he won. PERC's Brief at 14. But PERC fails to explain how, had Mr. MacCarthy been allowed to run for Co-President and won, ETEA (which would now be led by Mr. MacCarthy as Co-President) could have required Mr. MacCarthy to withdraw the charge or recuse himself or what ETEA (led by Co-President MacCarthy) could have done if Mr. MacCarthy refused to do so. PERC's "alternative actions" are not practical. Moreover, whether a union's actions breach the duty of fair representation does not depend on whether "practical alternative actions [are] available" but on whether the union's actions are arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. at 190. Regardless of whether ETEA could have taken

PERC also generally lacks jurisdiction over internal union disputes, including election-related claims. See, e.g., PBA Local 199 (Rinaldo), P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011) (PERC "will not exercise jurisdiction over claims that a member was wrongfully denied office in the union's organization"); North Warren Reg'l Educ. Ass'n, D.U.P. No. 2014-13, 40 NJPER 438, 440 (¶150 2014) (PERC "generally does not have jurisdiction over internal union disputes or matters"). PERC and Mr. MacCarthy both claim that the present case is an exception to the rule because it purportedly involves a union's adverse action against a member for filing an unfair practice charge. See Matter of MacCarthy at 15a (citing PBA Local 152 (Smith), P.E.R.C. No. 99-18, 24 NJPER 450 (¶29208 1998)); MacCarthy's Reply Brief at 15 (citing Smith). It doesn't. Smith involved a police union that brought internal disciplinary charges seeking to remove a member for, among other reasons, filing an unfair practice charge against it, which the police union claimed violated the member's oath "not to injure fellow members." Id. at 451. The Hearing Examiner in that case conclusively found that "[I]t clearly appear[ed] that [the member's] protected activity—the filing of his charge—triggered the police union's desire to remove him"; PERC affirmed. PBA Local 152 (Smith), H.E. No. 98-29, 24 NJPER 304, 306 (¶29146 1998). That case is inapposite to this case. Unlike ETEA, the police union in Smith lacked a legitimate organizational justification nor was there any actual or potential conflict of interest at stake.

PERC's interpretation of the Act may be "entitled to substantial deference," see Morris Cnty. Sheriff's Off. v. Morris Cnty. Policemen's Benevolent Ass'n, Loc. 298, 418 N.J. Super. 64, 74 (App. Div. 2011), but its conclusions of law are subject to de

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any practical alternative action, the action ETEA took was neither arbitrary nor discriminatory nor in bad faith. ETEA did not violate the duty of fair representation.

novo review on appeal. See, e.g., Matter of City of Newark, 469 N.J. Super. 366, 377 (App. Div. 2021) ("The question of whether the City has a managerial prerogative is primarily a question of law, which we review de novo"). Moreover, the duty of fair representation standard is itself a "deferential" standard with respect to the union's actions. See, e.g., Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-30, 27 NJPER 25, 26 (¶32014 2000) ("Any substantive examination of a union's performance...must be highly deferential") (quoting Air Line Pilots Ass'n, 499 U.S. at 78); New Jersey Transit, Mercer (Coley), H.E. No. 2021-10, 48 NJPER 6, 17 n. 25 (¶3 2021), adopted P.E.R.C. No. 2022-7, 48 NJPER 131 (¶33 2021) (referring to "the deferential standards of Vaca"). Because ETEA's election-related actions were neither unreasonable nor irrational, they are entitled to deference under the applicable legal standard. PERC's erroneous legal conclusion to the contrary that ETEA's actions were "arbitrary" is not entitled to deference and should be reversed accordingly.

CONCLUSION

For all of the foregoing reasons, the Eastampton Township Education Association respectfully requests that the Court affirm PERC's decision as to Count Two, reverse PERC's decision as to Count Three, and dismiss James MacCarthy's unfair practice charge in its entirety with prejudice.

Respectfully submitted,

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DATED: September 2, 2025