

D.U.P. NO. 93-27

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

UTU LOCAL 33,

Respondent,

-and-

Docket No. CI-92-102

EARLIE GRESHAM,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by Earlie Gresham against his majority representative, UTU Local 33, alleging that the UTU failed to fairly represent him when it settled his termination grievance rather than appeal it to arbitration. The Director finds that Gresham did not allege any facts to indicate that the UTU had coerced or threatened him into accepting a settlement agreement at the third step which reduced the discipline of discharge to a 20-day suspension.

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Appearances:

For the Respondent,
Thomas Elphick, Chairman, Grievance Committee

For the Charging Party,
Earlie Gresham, pro se

REFUSAL TO ISSUE COMPLAINT

On May 26, 1992, Earlie Gresham filed an unfair practice charge with the Public Employment Relations Commission against the United Transport Union, Local 33. Mr. Gresham alleges that the UTU has violated subsection 5.4(b)(3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it refused to appeal his grievance to arbitration. Gresham also alleges that this action violated the agreement between the UTU

1/ This subsection prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

and the employer, the N.J. Transit Bus Operations, Inc., as well as certain UTU by-laws.

The UTU filed a response denying that it had breached its duty to fairly represent Gresham and claims that it properly handled his grievance. It asserts that through its efforts at the third step of the grievance procedure, Gresham's discipline of discharge was reduced to a 20-day suspension. It also asserts that Gresham willingly accepted this reduction in settlement of his grievance.

A union is not obligated to bring every grievance to arbitration. Unions must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. A breach of the duty of fair representation occurs only when a union's conduct toward a unit member is "arbitrary, discriminatory, or in bad faith." Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967). The Commission and New Jersey Courts have consistently applied the Vaca standard in evaluating fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981); Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Loc. 153 (Thomas Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca v. Sipes. Rather, a union is allowed "wide range of reasonableness" in servicing its members. Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953).

Gresham does not state facts which demonstrate that the UTU breached its duty of fair representation toward him as to the conduct of the grievance hearing or the agreement it reached with N.J. Transit in his behalf.^{2/} The UTU submitted a copy of a letter from the third step hearing officer, dated December 2, 1991, which stated:

On November 26, 1991, I held a third step hearing at the request of Local #33, of the UTU on behalf of Earl Gresham. . . Operator Gresham is grieving a discharge for a Customer Complaint.

Present were: Operator Gresham, his Union Representative, T. Elphick, and for the Company, R. West.

Operator Gresham had no comments or interjections.

Mr. Elphick offered an argument to refute the letter of complaint, but, basically asked for the Company to afford the grievant one last chance.

I informed Operator Gresham based solely on the personal appeal from the Chairman of the United Transportation Union, I was modifying the discharge, to a twenty (20) day suspension and a final warning. The grievant is eligible to return to work on December 5, 1991.

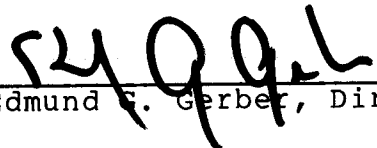
It is undisputed that the UTU represented Gresham through three steps of the grievance process, concluding the matter with an agreement that returned Gresham to his job with a 20-day suspension. Gresham states in his charge that Elphick informed him

^{2/} Although Gresham cites subsection 5.4(b)(3), he alleges facts that are pertinent to subsection 5.4(b)(1), which states: This subsection prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

that "...he would get me my job back provided I not persue the matter any further thru the union (sic)...." The hearing officer's report indicates that Gresham, by not objecting on the record, accepted the settlement on those terms.

Gresham does not allege any facts that indicate that the UTU coerced or threatened him into accepting the settlement, thereby acting discriminatorily or in bad faith with respect to representing Gresham's interests. Based upon the above, I find that Gresham's allegations against the UTU do not meet the Commission's complaint issuance standard.^{3/} Accordingly, I decline to issue a complaint on the allegations of this charge.^{4/} The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund E. Gerber, Director

DATED: January 28, 1993
Trenton, New Jersey

3/ Gresham also alleges that the UTU's actions were in violation of the contract between the UTU and N.J. Transit and the UTU by-laws. However, no facts were alleged in support of these claims. Further, even assuming arguendo that the UTU's actions were violative of the contract, that fact without more, may not constitute an unfair labor practice. Cf. State of New Jersey (Human Services).

4/ N.J.A.C. 19:14-2.3.