D.U.P. NO. 92-1

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

In the Matter of

N.J. SPORTS & EXPOSITION AUTHORITY
and IBT LOCAL 560,

Respondents,

-and- Docket Nos. CI-91-54 & CI-91-55

CARL GIORDANO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue complaints pursuant to charges filed by Carl Giordano against either the New Jersey Sports and Exposition Authority or IBT Local 560. The Director found that the Authority's action denying Giordano overtime work 1) was not based on protected activity (all bargaining unit members were denied Saturday and Sunday work), 2) occurred more than six months before the charge was filed, and 3) was no more than an alleged breach of the parties' collective negotiations agreement. With regard to the IBT, the Director found that the union acted reasonably when it refused to file a grievance contesting the loss of overtime work on Giordano's behalf after consulting its attorney. The IBT had lost the same grievance before an arbitrator in 1986.

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Appearances:

For the Respondent Authority
Genova, Burns & Schott, attorneys
(Nathaniel L. Ellison, of counsel)

For the Respondent Local 560
Schneider, Cohen, Solomon, Leder & Montalbano, attorneys
(Bruce D. Leder of counsel)

For the Charging Party
Carl Giordano, pro se

REFUSAL TO ISSUE COMPLAINT

On March 22, 1991, Carl Giordano ("Giordano") filed unfair practice charges against the New Jersey Sports and Exposition Authority ("Authority")(CI-91-54) and the International Brotherhood of Teamsters, Local 560 ("IBT")(CI-91-55) alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Giordano contends that the Authority is discriminating against him by refusing to allow full-time employees in his bargaining unit to work overtime hours on Saturday and

Sunday. Since 1986, part-time employees have been working the Saturday and Sunday hours. Giordano further alleges that the Authority is violating the Act by permitting employees in other bargaining units to work the overtime hours.

With regard to the IBT, Giordano contends that it violated the Act by refusing to file a grievance on his behalf contesting the loss of overtime work.

In 1986, when the Authority initially removed the overtime work from the full-time employees, all affected unions, including the IBT, filed grievances challenging the action. In each case, the validity of the employer's action was upheld by an arbitrator.

Based on the foregoing, I find that the Commission's complaint issuance standard has not been met. These allegations, if true, do not constitute an unfair practice as defined by the Act. There is nothing to indicate that the Authority's actions were taken against Giordano as a result of protected activity. Everyone in his bargaining unit (as well as other bargaining units) was denied the overtime work.

Moreover, the overtime work was withdrawn in 1986. N.J.S.A. 34:13A-5.4(c) precludes the Commission from issuing a complaint where an unfair practice charge has not been filed within six (6) months of the alleged occurrence, unless the aggrieved person was prevented from filing the charge. See North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

Giordano's allegations further fail to state a cause of action against the Authority. The substance of his claim is no more

than a mere breach of the parties' collective negotiations agreement. State of New Jersey (Dept. of Human Services), P.E.R.C No. 84-148, 10 NJPER 419 (¶15191 1984).

With regard to Giordano's allegations against the IBT, these too fail to state a cause of action. After Giordano came to the union, the union representative consulted its attorney. It was the attorney's advise that filing a grievance to challenge the loss of overtime work would be fruitless; the union (and the other unions) had already lost in arbitration on the same issue.

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances:

> In the specific context of a challenge to a union's representation in processing a grievance, the United States Supreme Court has held: 'A breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. 171, 190 (1967) (Vaca). The courts and this Commission have consistently embraced the standards of Vaca in adjudicating such unfair representation claims. See, e.g., Saginario v. Attorney General, 87 N.J. 480 (1981); In re Board of Chosen Freeholders of Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (April 1, 1982), pet. for certif. den. (6/16/82); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). [footnote omitted]
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> We have also stated that a union should

> attempt to exercise reasonable care and diligence in investigating, processing and presenting grievances; it should exercise good faith in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. Middlesex County; Local 194. All the circumstances of a particular case, however, must be considered before a determination can be made concerning whether a majority representative has acted in bad faith, discriminatorily, or arbitrarily under Vaca standards. [OPEIU Local 153 at 13.]

The U.S. Supreme Court has also held that to establish a claim of a breach of the duty of fair representation, such claim "...carried with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." Amalgamated Assn. of Street, Electric, Railway and Motor Coach Employees of American v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971). Further, the National Labor Relations Board has held that where a majority representative exercises its discretion in good faith, proof of mere negligence, standing alone, does not suffice to prove a breach of the duty of fair representation. Service Employees International Union, Local No. 579, AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977); Printing and Graphic Communication, Local No. 4, 249 NLRB No. 23, 104 LRRM 1050 (1980), reversed on other grounds 110 LRRM 2928 (1982).

Based on the foregoing, I decline to issue complaints in these matters. Both charges are dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Edmund G. Gerber, Director

DATED: July 5, 1991
Trenton, New Jersey