

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

In the Matter of

NEW JERSEY SPORTS & EXPOSITION
AUTHORITY,

Respondent,

-and-

SPORTS ARENA EMPLOYEES UNION
LOCAL 137, AFL-CIO,

DOCKET NO. CI-83-28

Respondent,

-and-

WILLIAM MONZIDELIS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by an individual who claimed that the Authority terminated his employment without just cause and that his majority representative did not honor his request to submit his termination to binding arbitration. The Director notes that the unfair practice allegations did not indicate any arbitrary, discriminatory or bad faith conduct on the part of the majority representative with regard to its decision not to submit the matter for arbitration. It further appeared that allegations against the majority representative purportedly constituting a breach of its duty of fair representation were not filed within six months of the occurrence of the claimed unfair practice.

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Appearances:

For the Respondent N.J. Sports & Exposition Authority
James H. Lockwood, Associate House Counsel

For the Respondent Sports Arena Employees Union
Tomar, Parks, Seliger, Simonoff & Adourian, P.C.
(David Seliger of counsel)

For the Charging Party
Feinstein, Bitterman & Schey, attorneys
(Joel M. Miklacki of counsel)

REFUSAL TO ISSUE COMPLAINT

On November 29, 1982, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by William Monzidelis ("Charging Party") against the New Jersey Sports & Exposition Authority ("Authority") alleging that the Respondent Authority was engaging in unfair practices within the

meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically N.J.S.A. 34:13A-5.4(a)(3), (4) and (5). ^{1/} The Unfair Practice Charge was subsequently amended on May 20, 1983 with the filing of allegations against the Charging Party's majority representative, Sports Arena Employees Union, Local 137, AFL-CIO ("Local 137") alleging violations of N.J.S.A. 34:13A-5.4(b)(1) and (3). ^{2/}

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

^{2/} N.J.S.A. 34:13A-5.4(b) 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. (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." The amendment also repeated the earlier filed allegations against the Authority.

It is not clear as to whether Local 137 was designated as a Respondent in the initial November 29 filing. The initial Charge was filed against "Meadowlands Racetrack (Mutual Dept.)" and listed the Authority's address and telephone number. The cover page of the Unfair Practice Charge did not designate Local 137 or any named representative of that organization as a respondent. However, the Charging Party in his statement of charge, listed violations under §§ 5.4 (b)(3), (4) and (5). On the Statement of Charge the Charging Party stated: "I William Monzidelis am bringing charges against my employer #3-5." A statement of the Charge follows which is signed at the bottom of the page. On the rear side of the Unfair Practice Charge Form, in a space normally reserved for continuations of the statement of a charge, the Charging Party stated: "I will like to bring same charges against Local #137 Cherry Hill, N.J. Same reason." [sic] The Charging Party served a copy of the Unfair Practice Charge solely with the Authority.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{3/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met.

A review of the factual allegations presented by the Charging Party is in order. The initial Unfair Practice Charge filed on November 29, 1982, alleges that the Authority on July 26, 1982, terminated the Charging Party from employment as a paramutual clerk for being "out of balance." The Charging Party asserts that the Authority's action was selective and, thus, without

^{3/} N.J.S.A. 34:13A-5.4(c) provides: "The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

just cause because lesser discipline is normally meted out to other employees for the same infraction. The initial Charge did not refer to any participation that Local 137 may have had concerning the Authority's disciplinary action. As remedy for the asserted employer unfair practice the Charging Party requested that his discipline be submitted to arbitration.

In response to the Commission's initial processing letters concerning the Charge, a copy of a collective negotiations agreement with Local 137 covering para-mutual clerks was submitted by the Charging Party. The collective agreement contains a grievance procedure under which disciplinary disputes may be grieved. Local 137 may present grievances relating to the discipline of unit members and may demand, at the terminal step, binding arbitration. ^{6/}

At the exploratory conference convened with the parties by the assigned Commission staff agent, the Charging Party was advised of the Commission's complaint issuance standard in matters which essentially involve the assertion of contractual violations by individual employees. ^{7/} A Charging Party must allege, as a gravaman for the unfair practice claim, that the majority representative has violated its duty of fair representation towards the employee and/or the employer has colluded with the majority

^{6/} The undersigned makes no determination concerning the negotiability/arbitrability of the Authority's disciplinary determination. The Authority states that it acted upon a request for reconsideration of its decision on July 30, 1982. The contract provides that arbitration may be invoked within five days of the Authority's final grievance determination. Effective July 1, 1982, amendments to N.J.S.A. 34:13A-5.3 permit the submission of disciplinary disputes to arbitration for employees without alternative statutory appeal procedures.

^{7/} The exploratory conference was attended by the Charging Party and the Authority.

representative in denying the employee his contractual rights and protections. The Charging Party advised that the Charge would be amended to allege a claim of unfair representation.

At the exploratory conference, the Charging Party was also advised of the six month limitation period for the filing of unfair practice charges. It was not until May 20, 1983 that the Charging Party formally sought to amend the Charge by alleging violations of the Act as to Local 137. The amended Charge alleges that upon his discharge on July 26, 1982 the Charging Party immediately contacted Local 137 asking for representation on his behalf regarding his termination. On July 27, 1982, a Local 137 representative contacted the Authority's Director of Mutuels and requested that the Authority reconsider its decision. The Charging Party states "at that time and place the Union refused to demand a hearing and further to proceed to arbitration pursuant to the terms of the Collective Bargaining Agreement." On August 1, 1982, the Charging Party presented a written request for arbitration to Local 137. The Charging Party maintains that it was not until October 29, 1982, that Local 137 advised him that it would not proceed to arbitration. ^{8/}

It is on the basis of the above stated facts that Charging Party asserts that Local 137 "be found in violation of

^{8/} Although the Charging Party's attorney filed a letter brief on February 17, 1983, addressing the six month limitation period for filing unfair practice charges, and arguing that the six month period did not begin to run until receipt of Local 137's October 29, 1982 letter, the charge was not formally amended until May 20, 1983. Charging Party did not serve either Respondent with the amendment until June 28, 1983.

N.J.S.A. 34:13A-5.4(b)(1) and (3) for failing to provide proper representation and failing to proceed to arbitration..."


In considering the issues relating to complaint issuance the undersigned has accepted, without passing upon, the factual assertion of the Charging Party that he was not advised of Local 137's decision not to pursue arbitration until receipt of its October 29, 1982 letter. Notwithstanding, there appears to be no basis upon which a complaint may be issued as to Local 137. Even assuming that the initial November 29, 1982 unfair practice charge was intended to allege violations against Local 137, there are no factual allegations contained in the initial Charge that refer to any misconduct on Local 137's part. The amended Charge was not filed within six months of October 29, 1982, nor does it describe any conduct which is facially improper. Local 137 requested reconsideration of the Authority's decision upon the Charging Party's request for assistance. It chose not to present the issue for binding arbitration, which in the absence of factual allegations by the Charging Party of arbitrary, discriminatory, or bad faith conduct on Local 137's part, is an act within that organization's permissible discretion. In re Council #1, AFSCME, P.E.R.C. No. 79-28, 5 NJPER 21 (¶ 10013 1978); In re Red Bank Bd. of Ed., D.U.P. No. 79-17, 5 NJPER 56 (¶ 10037 1979). See also In re N.J. Turnpike Authority and Walter Kaczmarek, P.E.R.C. No. 80-38, 5 NJPER 412 (¶ 10215 1979).

The Unfair Practice Charge against the Authority may be considered independently of any actionable charge against Local

137, In re N.J. Turnpike Authority and Jeffrey Beall, P.E.R.C. No. 81-64, 6 NJPER 560 (¶ 11284 1980), aff'd App. Div. Docket No. A-1263-80T3 (10/30/81), but the Commission has determined that the litigation of such unfair practice charge nevertheless must be grounded upon a claim that the majority representative either alone, or in collusion with the employer, violated the duty of fair representation. Beall, supra. As noted above, the Charging Party's assertion of improper representation is not factually supported in either the November 29, 1982 initial charge or the amended charge dated May 20, 1983.

For the above reasons, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: July 18, 1983
Trenton, New Jersey