

D.U.P. NO. 95-24

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

In the Matter of

COUNCIL OF NEW JERSEY  
STATE COLLEGE LOCALS,

Respondent,

-and-

Docket No. CI-95-26

WILLIAM R. DUSENBERRY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by a faculty member of Jersey City State College against his employee representative, Council of New Jersey State College Locals. The Director finds that the Council did not violate the Act when it refused to arbitrate the employee's grievance over the College's promotions policy.

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Appearances:

For the Respondent,  
Dwyer & Canellis, attorneys  
(Brian Miller Adams, of counsel)

For the Charging Party,  
William R. Dusenberry, pro se

REFUSAL TO ISSUE COMPLAINT

On December 6, 1994, William R. Dusenberry, an Assistant Professor employed by Jersey City State College, filed an unfair practice charge against the Council of New Jersey State College Locals. Dusenberry alleges that the Council violated 5.4(b)(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> by refusing to submit his grievance to arbitration.

Dusenberry's grievance asserted that Jersey City State College's practice of promoting candidates who earned doctorate

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<sup>1/</sup> 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."

degrees to associate professorships is in violation of N.J.A.C. 9:6 and the Council's collective negotiations agreement with the State Colleges.

Dusenberry applied for promotion to the rank of associate professor in 1992. He was ranked 24th in the College's promotion list. On March 23, 1994, Dusenberry objected to the College's promotions policies and the current promotion list, contending that the list violates the contract and the law. A grievance was initiated on May 1, 1994. The Council processed his grievance through steps one and two of its contractual grievance procedure. The College denied his grievances. On July 15, 1994, the Council refused to arbitrate his grievance. He appealed to the Council Grievance Committee, which denied his appeal September 12, 1994.<sup>2/</sup>

Dusenberry asserts that the Council owed a duty of representation not only to the membership but to him individually. The Council responds that its decision not to arbitrate Dusenberry's grievance was made in good faith and was based upon its assessment that the grievance was not raised in a timely manner, and was without sufficient merit.

N.J.S.A. 34:13-5.3 provides in part:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all

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<sup>2/</sup> Dusenberry supplied us with a copy of a Complaint he filed in Superior Court in November 1994, also alleging a breach of the Council's duty to represent him. These facts appear in his Complaint.

employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.

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). [10 NJPER 13].

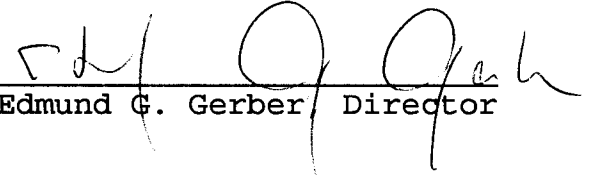
The U.S. Supreme Court has also held that to establish a claim of a breach of the duty of fair representation, such claim "...carried with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." Amalgamated Assn. of Street, 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).

Here, there are no allegations or facts demonstrating discrimination, bad faith or arbitrary conduct against Dusenberry by the Council. Dusenberry does not have an absolute right to have his grievance taken to arbitration. While he asserts that the Council's decision not to arbitrate his case violated the Act, he asserts no facts to support a finding that the Council acted arbitrarily, discriminatorily or in bad faith. Vaca. The Council contends that its decision not to arbitrate the promotion grievance was based upon its belief that the grievance lacked sufficient merit. An employee representative fulfills its statutory obligation to represent employees when it evaluates grievances on their merits and makes a judgment on whether arbitrating the issue is in the interests of its unit members as a whole. Employee organizations are entitled to a wide range of reasonableness in determining how to best service all of their members. Essex-Union Joint Meeting and Automatic Sales, Servicemen and Allied Workers, Local 575, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991); Jersey City Bd. of Ed., D.U.P. No. 93-7, 18 NJPER 455 (¶23206 1992).

Based upon the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.<sup>3/</sup> The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: January 12, 1995  
Trenton, New Jersey

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<sup>3/</sup> N.J.A.C. 19:14-2.3.