D.U.P. NO. 93-26

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

In the Matter of

TOWNSHIP OF MONROE,

Respondent,

-and- Docket No. CI-92-97

JOHN J. KURCZESKI,

Charging Party.

MONROE TOWNSHIP S.O.A.,

Respondent,

-and- Docket No. CI-92-98

JOHN J. KURCZESKI,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses charges filed by an employee against the public employer and majority representative. The charge alleged that the employer discriminated against the employee by reassigning him to another shift, violating 5.4(a)(3) and (a)(1) of the Act. The majority representative allegedly and unlawfully refused to process a grievance about the reassignment to arbitration, violating 5.4(b)(1) of the Act.

The Director determines that the charges do not assert facts suggesting alleged retaliation and that the majority representative does not have a duty to pursue the grievance to arbitration.

Both charges were dismissed.

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Appearances:

For the Respondent Township
Shain, Schaffer & Rafanello, attorneys
(Richard A. Rafanello, of counsel)

For the Respondent S.O.A.
Ralph V. Furino, Jr., attorney

For the Charging Party,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

REFUSAL TO ISSUE COMPLAINT

On May 11, 1992, John Kurczeski filed unfair practice charges against the Township of Monroe and the Monroe Township Superior Officers' Association ("SOA"). Kurczeski alleges that on or about April 28, 1991, he was "assigned to the desk" by the acting chief of police and such "effective demot[ion]" violates the terms

of the collective negotiations agreement between the Township and the SOA. He alleges that on September 21, 1991, he filed a grievance and the acting chief "failed to respond" and then the business administrator (the next step) advised him "that he had no grievance." Finally, on or about March 10, 1992, the charging party was allegedly "assigned to regular road duties on all but the 11 p.m. - 7 a.m. shift." These acts allegedly violate subsections 5.4(a)(1) and (3)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

Kurczeski also alleges that the SOA violated the duty of fair representation on or around December 3, 1991, when he requested that his grievance proceed to arbitration and the SOA "unanimously declined to represent him." These acts allegedly violate subsections 5.4(b)(1) and (5)[2/] of the Act.

Respondents deny that they engaged in unfair practices. The Township asserts that employment "transfers" are not negotiable; that the current agreement specifically provides that the Township

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1/ These subsections prohibit public employers, 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) 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."

2/ These subsections prohibit 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. (5) Violating any of the rules and regulations established by the commission."

retains the right to transfer employees (Article V); that charging party conceded that the Township's act was a "reassignment;" that the grievance was filed late; and that the Association (not Kurczeski) has the contractual right to pursue the matter to arbitration.

The SOA asserts that charging party requested it to advance a grievance on or about November 19, 1991. On November 27, 1991, counsel for the SOA drafted a four-page "opinion letter" advising that grieving the matter would be "futile." The letter was forwarded to SOA, which voted not to advance the grievance.

On September 21, 1992, we issued a letter tentatively dismissing the charges. No response was filed.

N.J.S.A. 34:13A-5.4 requires that unfair practice charges be filed within six months after the alleged unfair practice occurs. The filing of a grievance will not toll this statute of limitations. Kurczeski's April 28, 1991 reassignment occurred past the six-month limitations period. Any alleged unlawful act by the public employer on September 21, 1991, is thus outside the six-month period. No complaint may issue on these allegations.

The charging party has not alleged that the March 10, 1992 reassignment or partial reassignment was in retaliation for protected activity. In re Bridgewater Tp., 95 N.J. 235 (1984). Accordingly, no complaint may be issued against the Township. Furthermore, the matter of "reassignments" is covered by the collective negotiations agreement and its grievance procedure. No

facts indicate that the employer's conduct violated the Act. State of N.J. (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

An employee representative is not obligated to bring every grievance to arbitration. Majority representatives 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 representative'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). The fact that a union's decision results in a detriment to one unit member does not, without more, establish a breach of the duty. Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); see also Humphrey v. Moore, 375 U.S. 335 (1964). Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca v. Sipes. Rather, a union is allowed a "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).

No facts have been alleged suggesting that Local 11's decision not to pursue the grievances to arbitration violates the duty of fair representation. Accordingly, the charge is dismissed.[3/]

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: January 28, 1993
Trenton, New Jersey

3/ Charging Party has not alleged facts indicating that subsections 5.4(b)(3), (4) and (5) were violated. Accordingly, no complaint will issue concerning alleged violations of those subsections of the Act.