

D.U.P. NO. 93-31

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

In the Matter of

P.B.A. LOCAL NO. 105,

Respondent,

-and-

Docket No. CI-92-46

JOHN M. SHAW,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a complaint filed by John M. Shaw against the PBA, Local No. 5, alleging that the PBA gave him very little assistance when he was reassigned. Shaw did not allege any facts to indicate that the PBA violated its duty to fairly represent him or that it interfered with his right under the contract to file his own grievance. The Director also dismisses Shaw's untimely allegation that he was illegally expelled from membership in the PBA.

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Appearances:

For the Respondent
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Robert A. Fagella, of counsel)

For the Charging Party
John M. Shaw, pro se

REFUSAL TO ISSUE COMPLAINT

On December 26, 1991, John M. Shaw filed an unfair practice charge alleging that his majority representative, PBA Local 105, had violated subsection 5.4(b)(3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it (1) gave Shaw "very little assistance" when he objected to his transfer to another work location; and (2) expelled him from membership on September 19, 1989 because he was a member of the FOP.

^{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."

On March 2, 1992, the PBA filed a response asserting that Shaw's allegations that he was not assisted by the PBA failed to state a prima facie violation of the Act. The PBA argues that Shaw's allegation concerning his expulsion from the PBA is untimely filed.

Shaw is employed by the State Department of Corrections. On January 14, 1991, he was reassigned to the central medical unit after he was involved in a traffic accident while experiencing an insulin reaction. Immediately after his reassignment, he contacted the PBA vice-president for assistance. Shaw was advised sometime thereafter that the PBA, through its board and the president, determined that the Department's actions were appropriate and declined to file a grievance.

A union is not obligated to take every complaint to grievance or 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).

I find that the PBA did not breach its duty of fair representation toward Shaw.^{2/} Other than complaining that the PBA president never give him "a written document," Shaw does not allege any facts to indicate that the PBA acted arbitrarily or discriminatorily with respect to its decision not to appeal the Department's actions as to Shaw's reassignment. Nor does Shaw allege that the PBA interfered with his right to file a grievance in his own behalf.^{3/} Therefore, I dismiss this portion of the charge.

Shaw also alleges that he was illegally expelled from the PBA because of his affiliation with the FOP. The expulsion occurred over a year and a half before Shaw filed this charge. N.J.S.A.

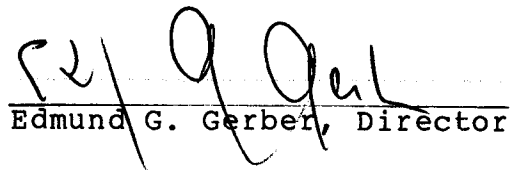
^{2/} Although Shaw cites subsection 5.4(b)(3), he alleges facts that are pertinent to subsection 5.4(b)(1), which states: This subsection prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed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

^{3/} Article XI.B.2. of the contract between PBA Local 105 and the State of New Jersey states that an individual employee is entitled file a grievance and to be represented by the PBA if so requested.

34:13A-5.4(c) precludes the Commission from issuing a complaint where an unfair practice charge has not been filed within six months of the occurrence of any unfair practice, 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).^{4/} Accordingly, I also dismiss this portion of the charge.

The Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: February 26, 1993
Trenton, New Jersey

^{4/} Shaw states in his charge that the PBA has reimbursed him for membership dues automatically deducted from his paycheck retroactively to the date he was expelled.