D.U.P. NO. 91-18

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

In the Matter of

MONTCLAIR TOWNSHIP and
AFSCME, LOCAL 2296,

Respondents,

-and- Docket No. CI-91-11

JAMES E. PEACE,

Charging Party.

SYNOPSIS

In an unfair practice charge brought by James Peace, an individual, the Director of Unfair Practices refuses to issue a complaint against AFSCME, Local 2296 and Montclair Township. The charge alleges that a contract between the Union and Township provides for a 60-day probationary period. An employee may be discharged for any reason during that period. Peace claimed he was discharged outside the 60-day period and the Union violated its duty of fair representation when it refused to process Peace's grievance contesting the discharge.

The Union argued that Peace's actual discharge occurred three days prior to his notification. Moreover Peace did not properly compute the 60-day time period. It believed the Township complied with the contract and therefore it refused to process the grievance. The Union's actions were reasonable and neither arbitrary nor discriminating and therefore did not constitute an unfair practice.

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Appearances:

For the Respondent - Township
Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Respondent - AFSCME
Szaferman, Lakind, Blumstein, Watter & Blader, attorneys
(Sidney H. Lehmann, of counsel)

For the Charging Party
James E. Peace, pro se

REFUSAL TO ISSUE COMPLAINT

On August 20, 1990, James Peace filed an Unfair Practice Charge[1/] with the Public Employment Relations Commission ("PERC") against the Township of Montclair ("Township") and AFSCME, Local 2296 ("AFSCME"). He alleged that he was discharged without notice the day after the 60-day probationary period in the contract expired. He then sought to have AFSCME represent him at a grievance

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1/ He amended the charge on November 28 and December 3, 1990.

hearing. Peace claimed that AFSCME refused to represent him.[2/] It was claimed that the conduct violated N.J.S.A. 34:13A-5.1 et seq. of the New Jersey Employer-Employee Relations Act ("Act"); specifically, subsections 5.4(a)(1) and (3)[3/] and (b)(3) and (5).[4/]

Article II, Section 1 of the contract between the Township and AFSCME provides:

> A new employee shall be deemed as probationary for a period of sixty (60) calendar days, and not less than forty-five (45) working days, from the date of his/her employment, during which time the employee can be terminated for any reason. (emphasis added)

It is undisputed that Peace was hired on April 23, 1990 as a temporary laborer. By letter dated June 20, 1990, the Township Manager, Robert Czech stated that Peace did not meet the

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2/ The charge also alleged that the Township would not pay Peace a 6% retroactive salary increase. The parties entered into a settlement of this allegation and that portion of the charge has been withdrawn.

3/ 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. "

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

requirements of his position and effective June 22, 1990 he would be terminated. Peace received the letter on the 22nd, the day of his discharge. He claims that he was an employee for 61 working days when he was terminated and therefore was no longer a probationary employee within the meaning of Article II, Section 1 of the contract.

AFSCME does not dispute that it refused to represent Peace at a grievance hearing. It takes the position that there has not been a violation of the contract and the employer complied with Article II, Section 1. It is AFSCME's position that Peace was fired on June 20, within the 60-day probationary period and the Township did not have to give actual notice to Peace before June 22. Moreover, AFSCME claims the notice to Peace was timely - one does not count the actual date of hire when computing the 60-day probationary period in Article II, Section I.[5/] Similarly, the Township states it did not violate the contract when it terminated Peace.

A violation of subsection (a)(5) occurs when an employer fails to negotiate an alteration of an established practice with the majority representtaive. New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Dkt No. A-1263-80T2. An employee has no standing to bring an (a)(5) charge

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5/ The Commission has a similar rule in computing the timeliness of filings before it. N.J.A.C. 19:10-2.1(a). In computing any period of time prescribed by ... these rules, the date of the act (or) event ... after which the designated period of time begins to run shall not be included.

against an employer alleging the repudiation of a contract provision; only the majority representative who negotiated the contract and is obligated to administer the contract has standing to bring such a charge. Accordingly, I dismiss the charge against the Township.

Here, the union believes the employer correctly interpreted the contract and admittedly refused to grieve Peace's discharge. Peace claims this refusal violated AFSCME's duty of fair representation. 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." Vaca v. Sipes, 386 U.S. 171 (1967) ("Vaca"). The Courts and the Commission have consistently embraced the standards of Vaca. A union may investigate the merits of a grievance and decline to process that grievance if the grievant's interpretation of the contract is contrary to the unions understanding. Jersey City Medical Center, P.E.R.C. No. 88-6, 15 NJPER 640 (¶18240 1987); N.J. Turnpike Employees Union, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); CWA Local 1082, D.U.P. No. 91-6, 11 NJPER 497 (¶21218 1990)

AFSCME's interpretation of Article II, Section 1 is rational and neither arbitrary nor discriminatory.

Accordingly, I dismiss Peace's charge against AFSCME.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: February 6, 1991
Trenton, New Jersey