D.U.P. NO. 93-37

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

In the Matter of

HAMMONTON BOARD OF EDUCATION and
TEAMSTERS LOCAL UNION No. 929,

Respondents,

-and-

Docket No. CI-93-15

JOHN O. BOREK,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an Unfair Practice Charge filed by John O. Borek against the Hammonton Board of Education and Teamsters Local 929. The Director finds that the charges against the Board were filed beyond the six months statute of limitations in N.J.S.A. 34:13A-1 et seq. and, therefore, untimely. The Director further finds that the charges against Local 929 concerning the union's decision not to proceed to arbitration on Borek's grievances do not allege facts which if proven would be violations of the Act. No facts alleged suggested that the union's actions were arbitrary, capricious or in bad faith. Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967).

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Appearances:

For the Respondent, Board of Education
Donio and Bertman, attorneys
(Samuel A. Donio, of counsel)

For the Respondent, Teamsters Local Union 929
Freedman and Lorry, attorneys
(Regina C. Hertzig, of counsel)

For the Charging Party,
John Borek, pro se

REFUSAL TO ISSUE COMPLAINT

On August 7, and 25, 1992, John O. Borek filed Unfair Practice Charges with the Public Employment Relations Commission against both Teamsters Local 929 and the Hammonton Board of Education. Borek alleges that the Board violated N.J.S.A. 34:13A-5.4(a)(3), (4) and (5)[1/] when it denied him the opportunity

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1/ These subsections prohibit public employers, their representatives or agents from: (3) discriminating in regard

Footnote Continued on Next Page

to work full-time hours during summer 1991 and when it changed his job classification from full-time to part-time for school year 1991-1992 in August 1991.

Borek alleges that Local 929 violated N.J.S.A. 34:13A-5.4(b)(1), (2) and (3)[2/] when it withdrew Borek's summer work grievance at an arbitration hearing on April 14, 1992, and when it refused to proceed to arbitration concerning his job classification change grievance.

The Board and Teamsters Local 929 have a collective negotiations agreement, effective from July 1990 to June 30, 1993, covering all regular bus drivers and regular full-time bus aides.

1/ Footnote Continued From Previous Page

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; and, (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/ These subsections prohibit public 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; (2) interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; and (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.

Borek was a 10-month full-time bus aide prior to school year 1991-1992. In September 1991, the Board reduced Borek's hours to part-time and accordingly he was excluded from the Teamsters unit. As a consequence, his salary and benefits were reduced and/or eliminated. Borek filed a grievance on his hours reduction and reclassification. Local 929 decided not to proceed to arbitration on his grievance; it determined that the decision to assign part-time rather than full-time hours was a managerial prerogative and therefore not grievable or arbitrable under the parties' contract. The Board and Local 929 allege that the decision to reduce Borek's hours was based upon economic considerations.

Borek also filed a grievance about the allocation of summer hours. He had worked full-time hours during summer 1990, but the Board only assigned him part-time hours during summer 1991. He filed a grievance about the Board's denial of full-time summer hours in May 1991. Local 929 processed this grievance to arbitration and withdrew this grievance at the arbitration hearing on April 14, 1992; it determined that the decision to assign a bus aide morning or afternoon hours, but not both, was not arbitrable under the contract. The agreement at Article VII states:

> Matters which are now, or which are determined in the future to be not grievable under the Rules and Regulations of the Hammonton Board of Education will not be grievable under this agreement.

The agreement also states, in the arbitration clause:

> Rulings on the interpretation and application of the Rules and Regulations of the Board of Education will not be within the jurisdiction of the arbitrator.

The Teamsters believed that the assignment of full or part-time summer hours was a rule or regulation of the Board and, therefore, not within an arbitrator's jurisdiction.

ANALYSIS

Charges Against the Board

Borek filed Unfair Practice Charges against the Board on August 7 and 25, 1992. The Board notified Borek of its decision about summer work in early 1991 and Borek filed a grievance in May 1991. The Board notified Borek of its decision to reclassify his position to part-time bus aide in August 1991. N.J.S.A. 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). No facts are alleged which demonstrate that Borek was prevented from filing an unfair practice charge. The Board's actions occurred at least a year from the filing of the charge. Since the charge fails to allege the occurrence of unfair practices by the Board within the six-month period prior to August 7 or 25, 1992, I decline to issue a complaint and dismiss the charges against the Board.

Even if Borek's allegations were timely, they would be dismissed on other grounds. Borek alleges that the Board violated subsection (a)(5) of the Act. This section prohibits public employers from refusing to negotiate in good faith with a majority

representative or refusing to process grievances presented by the majority representative. Such a charge can generally be filed only by the party to whom these rights and obligations flow, i.e., the majority representative. Absent circumstances not present here, an individual employee lacks standing to maintain a claim that an employer violated subsection 5.4(a)(5) of the Act. N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Dkt. No. A-1263-80T2; Rutgers University, P.E.R.C. No. 88-130, 14 NJPER 414 (¶19166 1988); City of Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986); City of Atlantic City, D.U.P. No. 88-6, 13 NJPER 805 (¶18308 1987); Camden County Highway Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984). This part of the unfair practice charge must be dismissed.

Borek also charges that the Board violated subsection 5.4(a)(4) which prohibits employers from discharging or otherwise discriminating against any employee because he has filed a petition or complaint under the Act. Both of the Board's actions about which Borek complains, the denial of summer hours in early 1991, and the reclassification of his position from full to part-time in August 1991, occurred well before Borek filed his Unfair Practice charge against the Board on August 25, 1992. The Board could not have been motivated by Borek's "filing a petition or complaint under the Act" when it took the complained-of actions. Accordingly, this part of the charge must also be dismissed.

Charges Against Teamsters Local 929

Borek alleges that Local 929 violated the Act[3/] by withdrawing his summer work grievance at an arbitration hearing on April 14, 1992, and by refusing to proceed to arbitration with his reclassification grievance.

A majority representative is responsible for representing the interests of all unit members without discrimination. Subsection 5.4(b)(1) requires that an employee organization fulfill its duty of fair representation. New Jersey has adopted the standard set forth in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967); Belen v. Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), for deciding duty of fair representation cases. In Vaca v. Sipes, the Supreme Court 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, capricious or in bad faith. [Id. at 190, 64 LRRM 2376]

There is nothing in Borek's charge which, if true, would indicate that Local 929's conduct was arbitrary, capricious or in bad faith. Although Local 929 agreed to take his summer work grievance to an arbitration hearing, it withdrew the grievance when it determined that the decision to assign of full or part-time

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3/ Although Borek alleged that the Teamsters violated subsections 5.4(b)(2) and (3), he presented no facts to support these allegations. Additionally, the rights which are addressed by these subsections protect the public employer and thus, an individual employee lacks standing to bring claims that such rights have been violated. Accordingly, as to these allegations the charge is dismissed.

summer hours was a rule or regulation of the Board and, therefore, not within an arbitrator's jurisdiction. Admittedly, the union initially encouraged Borek to file a grievance about his reduction of hours and reclassification; it later believed that this decision was within the Board's managerial prerogative and not arbitrable. This change of position is not an unfair practice. A union has no obligation to take every grievance to arbitration. Vaca. NJ Transit v. ATU Local 82 (Debra Wilson), D.U.P. No. 90-12, 16 NJPER 256 (¶21106 1990). I conclude that the charging party has not alleged facts which if proven would be violations of the Act.

Accordingly, the allegations against Teamsters Local 929 are dismissed and the Unfair Practice Charges are dismissed in their entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: April 21, 1993
Trenton, New Jersey