

D.U.P. NO. 92-26

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

In the Matter of

UNITED INDUSTRIAL WORKERS,  
LOCAL 8,

Respondent,

-and-

Docket No. CI-92-53

ROBERT C. TUNIA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint pursuant to charges filed by Robert C. Tunia against the United Industrial Workers, Local 8. The Director found that the charge did not state any facts which supported Mr. Tunia's claim that the union failed to properly represent him in filing and processing a grievance.

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Appearances:

For the Respondent,  
Ed Pulver, President

For the Charging Party,  
Robert C. Tunia, pro se

REFUSAL TO ISSUE COMPLAINT

On January 15 and February 21, 1992, Robert C. Tunia filed an unfair practice charge with the Public Employment Relations Commission against Local 8, United Industrial Workers. The charging party alleges that Local 8 violated subsections 5.4(b)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")<sup>1/</sup> The charging party alleges that Local

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<sup>1/</sup> 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; (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; and, (5) Violating any of the rules and regulations established by the commission."

8 failed to supply him with blank grievance forms. However, Tunia acknowledges that he was given a copy of a used form and was able to re-use that form. The union representative did sign his grievance shortly after Tunia prepared it.

A majority representative is responsible for representing the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. Subsection 5.4(b)(1) requires that an employee representative fulfill its duty of fair representation. New Jersey has adopted the standard of review set forth in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967) for deciding duty of fair representation cases. D'Arrigo v. N.J. State Bd. of Mediation, \_\_\_ N.J. \_\_\_ (1990). In Vaca, the Supreme Court held:

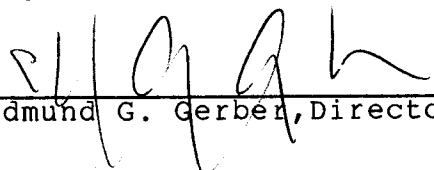
...a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith.  
[Id. at 190, 64 LRRM 2376]

See also, Union County College Chapter of AAUP (Donahue), P.E.R.C. No. 85-121, 11 NJPER 374 (¶16135 1985).

Tunia has failed to allege facts showing how Local 8 violated the Act. It appears that Local 8 assisted Tunia by signing his grievance. Tunia has not alleged any facts which indicate that Local 8 acted arbitrarily or in bad faith.

Accordingly, I find that the Commission's complaint issuance standard has not been met and decline to issue a complaint in this matter. N.J.A.C. 19:14-2.1 and 2.3.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: June 12, 1992  
Trenton, New Jersey