D.U.P. NO. 96-3

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

In the Matter of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
(AFL-CIO, LOCAL #11,

Respondent,

-and-

Docket No. CI-95-62

JOSEPH SHERMAN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a unit member's charge alleging his employee representative violated the Act by refusing to appeal an arbitrator's decision upholding the employee's termination. The Director found that the union had no legal obligation to appeal a binding arbitration decision.

The Director also dismisses the employee's charge that his majority representative failed to fairly represent him when it settled his earlier suspension grievance. The Director finds that the union did not violate the Act by settling the grievance based upon the employer's agreement to full back pay.

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Appearances:

For the Respondent,
Thomas Walker, Business Representative

For the Charging Party,
Joseph Sherman, pro se

REFUSAL TO ISSUE COMPLAINT

On March 13, 1995 Joseph Sherman filed an unfair practice charge against his employee representative, Teamsters Local 11. Sherman alleges that Local 11 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A et seq., subsections 5.4(b)(1), (3) and (5)[1/] by settling a grievance

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1/ 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. (5) Violating any of the rules and regulations established by the commission."

concerning his 1993 suspension prior to arbitration and by refusing to appeal an arbitrator's decision upholding his termination.

Based upon the allegations set forth in the charge, I find that the charge must be dismissed. First, Sherman alleges that Local 11 failed to appeal an arbitration decision upholding Sherman's termination from Middlesex County College in 1993. By letter of January 20, 1995 Local 11 advised Sherman that it would not appeal the decision since its contract provided that arbitration is "final and binding" and that an appeal in court would not be successful.

In the second matter, Sherman alleges that in February, 1995, Local 11 settled an earlier grievance without his permission and cancelled a pending arbitration over his suspension. This matter arose out of a three-day suspension imposed upon Sherman. In 1995, Local 11 and the College settled this grievance by awarding Sherman three days back pay. Accordingly, the union had no reason to arbitrate the suspension. Sherman alleges that he wanted the allegations precipitating his three-day suspension to be heard by an arbitrator anyway because the matter had been presented in his termination arbitration. He does admit, however, that the record of the suspension was stricken from the record at the arbitration hearing.

N.J.S.A. 34:13-5.3 provides in part:

> A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible

> for representing the interest of all such employees without discrimination and without regard to employee organization membership.

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances:

> In the specific context of a challenge to a union's representation in processing a grievance, the United States Supreme Court has 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, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190 (1967) (Vaca). The courts and this Commission have consistently embraced the standards of Vaca in adjudicating such unfair representation claims. See, e.g., Saginario v. Attorney General, 87 N.J. 480 (1981); In re Board of Chosen Freeholders of Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (April 1, 1982), pet. for certif. den. (6/16/82); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). [10 NJPER 13]

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 U.S. Supreme Court has also held that to establish a claim of a breach of the duty of fair representation, such claim "...carried with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to

legitimate union objectives." Amalgamated Assn. of Street, Electric, Railway and Motor Coach Employees of American v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

Here, there are no allegations or facts demonstrating that Local 11 engaged in discrimination, bad faith or arbitrary conduct toward Sherman. With regard to Sherman's termination, Local 11 represented Sherman in arbitration. The fact that Local 11 made a good faith decision not to seek an appeal of the arbitrator's decision in court is not a violation of its duty to represent unit employees.

With regard to the suspension, Sherman did not have an absolute right to have the union pursue arbitration over his suspension. Sherman asserts no facts to support a finding that Local 11 acted arbitrarily, discriminatorily or in bad faith by settling the dispute. An employee representative fulfills its statutory obligation to represent employees when it evaluates grievances on their merits and makes a judgment on whether arbitrating the issue is in the interests of its unit members as a whole. Employee organizations are entitled to a wide range of reasonableness in determining how to best service all of their members. Essex-Union Joint Meeting and Automatic Sales, Servicemen and Allied Workers, Local 575, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991); New Jersey Transit and ATU (Chimbumu), D.U.P. No. 95-23, __ NJPER ___(¶_____ 1995); Jersey City Bd. of Ed., D.U.P. No. 93-7, 18 NJPER 455 (¶23206 1992).

Having obtained the desired result from the College voluntarily, there is no basis for Local 11 to have arbitrated Sherman's suspension. Sherman acknowledges that the College's charges of misconduct against him which gave rise to the 3-day suspension were not considered by the arbitrator. Additionally, I have reviewed the decision of the arbitrator concerning Sherman's termination. There is no indication that the Arbitrator relied on Sherman's prior discipline in reaching her result on his termination case.

Accordingly, I do not find any basis for concluding that Local 11 acted improperly in settling Sherman's suspension case with full back pay.

In view of all of the foregoing, I find that the Commission's complaint issuance standard has been met and am not inclined to issue a complaint on the allegations of this charge.[2/] The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: July 11, 1995
Trenton, New Jersey

2/ N.J.A.C. 19:14-2.3.