

D.U.P. NO. 95-18

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

In the Matter of

SPORTS ARENA EMPLOYEES, LOCAL 137,

Respondent,

-and-

Docket No. CI-94-29

JOHN J. COSTELLO, JR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by John J. Costello, Jr. against Sports Arena Employees, Local 137, Laborers International Union of America, AFL-CIO. The charge alleged that Local 137 had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by failing to file a grievance and refusing to take a grievance to arbitration. The Director found, contrary to the allegations, that Local 137 had filed a grievance on Costello's behalf. The Director also found that none of the allegations indicated that Local 137 acted arbitrarily, discriminatorily or in bad faith in determining not to pursue Costello's grievance to arbitration. Accordingly, the Director declined to issue a complaint and dismissed the charge.

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Appearances:

For the Respondent,  
Greitzer & Locks, attorneys  
Carl McConnell, of counsel

For the Charging Party,  
Sobel & Lyon, attorneys  
John M. Esposito, of counsel

REFUSAL TO ISSUE COMPLAINT

On October 25, 1994, John J. Costello, Jr., filed an unfair practice charge against the Sports Arena Employees' Local 137, Laborers International Union of America, AFL-CIO. The charge alleges that Local 137 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1) and (5),<sup>1/</sup> when it allegedly refused to file a grievance contesting Costello's discharge. The charge further alleges that

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

the union violated the Act when it refused to take his case to arbitration.

Local 137 denies that it violated the Act. It claims that it accompanied Costello to a meeting at which the employer charged him; demanded an appeals hearing; obtained an indefinite suspension pending the hearing and filed a timely grievance on Costello's behalf. It further alleges that it met with Costello before presenting his case at a second step hearing, met again with Costello and represented him at the third step grievance hearing. Finally, Local 137 asserts that it acted properly in deciding not to pursue Costello's case to arbitration.

Local 137 represents approximately 17 program sellers at the Meadowlands Racetrack. Costello began employment at the Meadowlands in 1976 as a program seller and was a member of Local 137. On May 11, 1993, Costello was informed by the Director of Admissions that he was indefinitely suspended for turning in an inadequate number of programs at the end of his shift without a satisfactory explanation.

Charging party alleges that this suspension was "ultimately converted into a termination," but does not fully explain what occurred between the suspension and the termination. Local 137's representatives did prepare a grievance on Costello's behalf and represented him at least at one of the grievance hearings before the Meadowlands finally terminated him. On June 2, 1993, Anthony Rosamilla, a supervisor at the Meadowlands, prepared an interoffice memorandum which states:

The evidence presented by Sports Authority witnesses in my office on May 26, 1993, clearly indicated that the only logical conclusion concerning the disappearance of programs on Sunday, May 9, 1993, is that John Costello deliberately misrepresented his cash returns on that day.

Matters such as this are so serious that the only alternative available to managers uncovering this type of behavior is to dismiss any employee so involved.

Therefore, Mr. Costello's grievance must be denied.

Significantly, the memo identified Bob Liquori, Dave Attilo and Barry Thomas as union attendees. Liquori is one of Local 137's field representatives and Attilo and Thomas are shop stewards at the Meadowlands.<sup>2/</sup> Costello acknowledged that he had met with Attilo, Liquori and Barry Thomas. He also acknowledged that he had attended meetings with both Local 137 representatives and management representatives.<sup>3/</sup> Costello alleges in his charge, however, that the union "neglected its duty to process the grievance and rather abandoned it on the conclusionary allegation that the grievance could not be won." (emphasis added). It appears that Local 137 prepared a grievance and attended a hearing on May 26, 1993, on Costello's behalf. Costello's claim that Local 137 refused him any assistance is contradicted by his own acknowledgements.

Costello asserts no facts showing that Local 137 treated him in a discriminatory, arbitrary or bad faith manner in deciding

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<sup>2/</sup> Local 137 submitted a copy of this memo.

<sup>3/</sup> These acknowledgments were made at the informal exploratory conference.

not to take his grievance to arbitration. The charge acknowledges that Local 137 decided to abandon the grievance "on the conclusionary allegation that the grievance could not be won."

ANALYSIS

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); AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). [10 NJPER 13].

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). Further, the National Labor Relations Board has held that where a majority representative exercises its discretion in good faith, proof of mere negligence, standing alone, does not suffice to prove a breach of the duty of fair representation. Service Employees International Union, Local No. 579, AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977); Printing and Graphic Communication, Local No. 4, 249 NLRB No. 23, 104 LRRM 1050 (1980), reversed on other grounds 110 LRRM 2928 (1982).

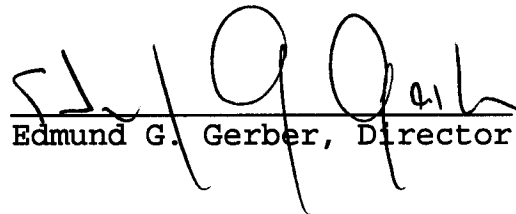
Here, there are no allegations or facts indicating arbitrary, discriminatory or bad faith conduct against Costello by his union. While the charge alleges that the union refused to process a grievance, it appears that Local 137 prepared a grievance and accompanied Costello to at least one hearing on his behalf. Rosamilla's memo refers to a meeting concerning this grievance at which Costello and his union representatives were present. Costello acknowledged that the union met with him prior to and accompanied him to a meeting with his employer's supervisors concerning his suspension. Taken together, the specific allegations contained in

the charge, Rosamilla's memo and Costello's acknowledgments belie the allegation that the union refused to process his grievance.

Costello did not have an absolute right to have his grievance taken to arbitration and asserts no facts supporting a finding that Local 137 acted arbitrarily, discriminatorily or in bad faith in making its decision not to go to arbitration. Vaca.

Based upon the above, I decline to issue a complaint on the allegations of this charge and the case is dismissed.<sup>4/</sup>

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: December 23, 1994  
Trenton, New Jersey

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<sup>4/</sup> N.J.A.C. 19:14-2.3.