

D.U.P. NO. 90-12

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

In the Matter of

NEW JERSEY TRANSIT &  
ATU LOCAL 821,

Respondents,

-and-

Docket No. CI-89-95

DEBRA WILSON,

Charging Party.

SYNOPSIS

The Director refuses to issue a complaint on a charge alleging that New Jersey Transit and ATU Local 821 violated the New Jersey Employer-Employee Relations Act when the charging party was discharged and the union refused to take her grievance to arbitration. The Director finds that the membership's refusal to take the grievance to arbitration, by itself, is not a violation of the duty of fair representation.

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Appearances:

For the Respondent NJ Transit  
Robert J. DelTufo, Attorney General  
(David S. Griffiths, Deputy Attorney General)

For the Respondent ATU Local 821  
Weitzman & Rich, Esqs.  
(Richard P. Weitzman, of counsel)

For the Charging Party  
Debra Wilson, pro se

REFUSAL TO ISSUE COMPLAINT

On July 20 and 26, 1989, Debra Wilson filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against New Jersey Transit ("Company") and ATU, Local No. 821 ("Local 821"). Wilson alleges that the respondents violated subsections 5.4(b)(1) and (3) of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")<sup>1/</sup> when the Company discharged her and Local 821 refused to take her grievance to arbitration.

The Company asserts that the allegations in the charge, if true, would not constitute an unfair practice and that the charge is untimely under N.J.S.A. 34:13A-5.4(c). Local 821 asserts that it is not an unfair practice to submit a determination of whether to take a grievance to arbitration to a vote of the union membership.

The Commission has delegated its authority to issue complaints to me and established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the charging party's allegations, if true, may constitute unfair practices within the meaning of the Act.<sup>2/</sup> If this standard has not been met, I may decline to issue a complaint.<sup>3/</sup>

On February 7, 1990, a Commission staff agent conducted an exploratory conference. The following facts are alleged by the Charging Party. For the reasons set forth below, I do not find 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 (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."

<sup>2/</sup> N.J.A.C. 19:14-2.1.

<sup>3/</sup> N.J.A.C. 19:14-2.3.

the Commission's complaint issuance standards have been met by these charges.

Debra Wilson was employed by the Company. When confronted about a substance abuse problem, Wilson admitted to having one. Lynn Wilkins, her supervisor, told her the Company would help her and sent Wilson to the medical unit. In December 1988, two other employees were terminated for substance abuse. In May 1989, one of those employees was reinstated and placed in an outpatient program.

Wilson went to the medical unit where she was given a certificate stating that she could not work and an appointment for counseling in the Employee Advisory Service program. She came to her counseling appointment the next day, November 28, 1988, and was given a termination slip. She was terminated for alleged substance abuse and a bad performance record.

The union grieved Wilson's termination through the initial steps of the contractual grievance procedure. On January 27, 1989, Wilson's name was placed on a ballot and submitted to the union membership for a decision concerning whether to take her termination grievance to arbitration. The membership voted against taking Wilson's grievance to arbitration. At another meeting, the membership decided to take another employee's grievance to arbitration, although that employee had not yet gone through all of the initial steps of the grievance procedure. Local 821 members are assessed a fee for each grievance that is arbitrated.

Based on Wilson's allegations, it appears that the Commission's complaint issuance standard has not been met. Unions must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. 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 Commission and New Jersey Courts have consistently applied the Vaca standard in evaluating fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981); Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Loc. 153 (Thomas Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). The fact that a union's decision results in a detriment to one unit member does not establish a breach of the duty. Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); see also Humphrey v. Moore, 375 U.S. 335 (1964). Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca v. Sipes. Rather, a union is allowed "wide range of reasonableness" in servicing its members. Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953).

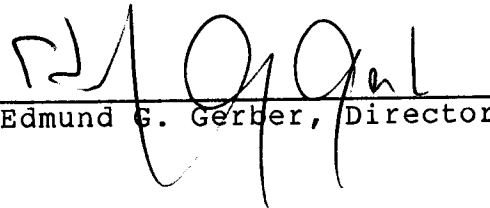
Wilson alleges that Local 821 refused to take her grievance to arbitration after the initial steps of the grievance procedure had been followed and after the membership voted on it. By itself,

Local 821's decision to take one member's grievance to arbitration but not another's is not a violation of its duty of fair representation. Ford Motor Co. v. Huffman. Accordingly, I will not issue a complaint on the charge against Local 821.

Wilson contends that the Company violated the Act when it terminated her for substance abuse and an overall poor work record. However, she does not allege any facts which might constitute an unfair practice by the Company.

Based upon the foregoing, I do not believe that the Commission's complaint issuance standard has been met and refuse to issue a complaint on the allegations of this charge. Accordingly, the charge is dismissed.<sup>4/</sup>

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: April 23, 1990  
Trenton, New Jersey

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<sup>4/</sup> Since I dismissed the Charge against the Company, I do not address the Company's argument that the charge is untimely.