

D.U.P. NO. 96-18

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

In the Matter of

R.W.D.S.U., LOCAL 29,

Respondent,

-and-

Docket No. CI-96-30

JOHN H. DREW,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the union breached its duty of fair representation by refusing to process charging party's grievance to arbitration. There are no factual allegations which would indicate that the union's conduct towards charging party was arbitrary, discriminatory or in bad faith.

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Appearances:

For the Charging Party
John H. Drew, pro se

REFUSAL TO ISSUE COMPLAINT

On November 17, 1995, John H. Drew filed an unfair practice charge alleging that RWDSU Local 29, AFL-CIO, CLC violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically, subsections 5.4(b)(1) through (5).^{1/} by refusing to process a grievance regarding Mr. Drew's termination by the Borough of Wanaque.

^{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. (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. (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. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

The Commission has the authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that final proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission has delegated the authority to issue complaints to me. N.J.A.C. 19:14-2.1. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

For the reasons stated below, the Commission's complaint issuance standard has not been met.

Drew alleges that he held a provisional title for over twenty years. When a Civil Service open competitive test was given for the position, Drew failed the test and was terminated. Local 29 refused to arbitrate his termination grievance and therefore, Drew contends it breached its duty of fair representation.

Drew alleges that a union business agent indicated that his grievance would be referred to arbitration and that two months later, he was told the union would not arbitrate his discharge grievance.

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. OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); 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). 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, 21 NJPER 54 (¶26038 1995); Jersey City Bd. of Ed., D.U.P. No. 93-7, 18 NJPER 455 (¶23206 1992).

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 best interests of the unit as a whole.

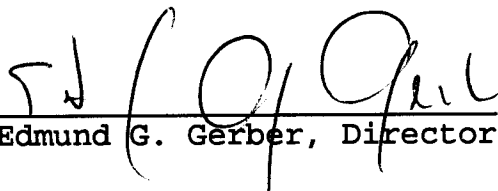
The union's refusal to arbitrate Drew's grievance is not an unfair practice. Moreover, the union's change of position does not, absent more, constitute a basis for concluding that Local 29 acted improperly by refusing to pursue arbitration over Drew's termination. There are no other facts alleged in his charge which would indicate that Local 29 violated subsections 5.4(b)(1) through (5).

By letter dated February 20, 1996, I indicated to Mr. Drew that I was not inclined to issue a complaint on the allegations of his charge. Further, I advised Drew that any additional information he wished to bring to my attention would have to be submitted by the close of business on March 1, 1996.

A letter from Drew was received on March 5, 1996. However, the letter does not allege facts which would indicate that Local 29 violated subsections 5.4(b)(1) through (5).

Therefore, the Commission's complaint issuance standard has not been met and I decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: March 18, 1996
Trenton, New Jersey