

D.U.P. NO. 96-19

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

In the Matter of

NEW JERSEY TRANSIT
& ATU LOCAL 820,

Respondents,

-and-

Docket No. CI-96-37

GERALD EDWARDS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses bus driver Gerald Edwards' charge against his employer New Jersey Transit and his representative ATU Division 820. Edwards alleged that New Jersey Transit terminated him "unfairly" but alleged no nexus to protected activity under the Act. Edwards alleged that his union representative did not "use his best efforts" at his disciplinary hearing. The Director found that these allegations are not violations of the Act.

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Appearances:

For the Respondent New Jersey Transit
Deborah T. Poritz, Attorney General
(David Griffiths, Deputy Attorney General)

For the Respondent ATU Local 819
Weitzman & Weitzman
(Richard Weitzman, of Counsel)

For the Charging Party
Gerald Edwards, pro se

REFUSAL TO ISSUE COMPLAINT

On December 7, 1995, January 3, 1996 and February 2, 1996,
Gerald Edwards filed an unfair practice charge with the Public
Employment Relations Commission against New Jersey Transit and
against A.T.U. Division 820.^{1/} The charge alleges that New Jersey

^{1/} Although the charge named "Local 819" as the Respondent Union,
ATU Division 820 asked that we correct our records to indicate
that it is Mr. Edwards' majority representative.

Transit violated subsections 5.4(a)(1), (3), (4), and (7)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it unfairly dismissed him from a bus driver position for misappropriating funds. Edwards charges that his majority representative, ATU, violated subsections 5.4(b)(1), (3) and (5) of the Act^{3/} by not representing him properly.

Edwards' charge asserts that New Jersey Transit dismissed him when an audit revealed he was short \$130 and 10 tickets. He further alleges that his union president did not "put forth his best efforts to defend [him]" concerning the termination.

Based upon the allegations set forth in the charge, I find that New Jersey Transit has not engaged in conduct which violates the Act. Our Act prohibits public employers from "discriminating in

^{2/} These subsections prohibit public employers, 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) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (7) Violating any of the rules and regulations established by the commission."

^{3/} 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."

regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of rights guaranteed them by this act" (emphasis added). Among those rights are,

the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity.... [N.J.S.A. 34:13A-5.3].

See Bridgewater Tp., 95 N.J. 235 (1984).

Edwards has alleged no facts suggesting that New Jersey Transit discriminated against him because of any activity protected by the Act; rather, he claims that his termination was unfair.

Edwards' charge against the ATU alleges that Division 820 President "did not put forth his best efforts to defend [him]" and that the union advised him against "working for probation."

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]

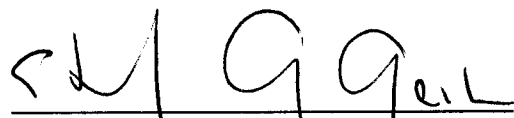
Here, there are no allegations which would suggest that Local 819's representation of Edwards was arbitrary, discriminatory or in bad faith. Employee organizations are entitled to a wide range of reasonableness in determining how to best service all of their members. Essex-Union Joint Meeting and Automatic 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).

Even assuming arguendo that the union's conduct in defending Edwards at the disciplinary hearing was negligent, proof of mere negligence, standing alone, does not suffice to prove a breach of the duty of fair representation where a majority representative exercises its discretion in good faith. 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). Further, in response to the ATU's invitation to arbitrate the termination, Edwards requested on August 24, 1995 that the union discontinue processing his termination grievance.

Therefore, I find that the Commission's complaint issuance standard has not been met and will not issue a complaint on the allegations of this charge.^{4/} The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: March 20, 1996
Trenton, New Jersey

^{4/} N.J.A.C. 19:14-2.3.