

D.U.P. NO. 96-15

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

In the Matter of

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 97,

Respondent,

-and-

Docket No. CI-95-22

DONELL BARKER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on Donnel Barker's allegations that IBT Local 97 inadequately represented him by failing to process his grievances in a reasonable time, negotiating a last chance agreement that it urged him to sign, and by refusing to arbitrate a grievance regarding his termination.

The Director finds that although Barker alleged that Local 97 failed to process his grievances in a reasonable time, that he did not allege that the processing was untimely. The Director also finds that Local 97's negotiating a last chance agreement was not an unfair practice and that urging Barker to sign the agreement was not coercive or threatening. Finally, the Director finds that the terms of the last chance agreement Barker signed expressly waived his right to arbitrate the grievance over his termination.

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Appearances:

For the Respondent,  
Schneider, Goldberger, Cohen, Finn, Solomon, Leder &  
Montalbano, attorneys  
(James M. Mets, of counsel)

For the Charging Party,  
Tina Velantzas-Austin, attorney

REFUSAL TO ISSUE COMPLAINT

On December 6, 1994, Donell Barker filed an amended unfair practice charge with the Public Employment Relations Commission against the University of Medicine and Dentistry of New Jersey and the International Brotherhood of Teamsters Local 97. On February 14, 1996, we received a fully executed Memorandum of Agreement and Release from Barker withdrawing his charge against UMDNJ. Barker's counsel also informed us on February 22, 1996 that he wishes to pursue the remainder of the charge against IBT Local 97.

Barker alleges that Local 97 violated subsection 5.4(b) (1)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act N.J.S.A. 34:13A-1 et seq. by inadequately representing him from early 1994 until his September 1994 termination.

Barker states that he filed grievances on February 28 and July 31, 1994. He alleges that Local 97 ignored the grievances and did not process them in a reasonable time.

Barker states that UMDNJ moved to terminate him effective May 23, 1994. On May 24, Local 97 representative Joan Porter met with the employer and negotiated a last chance agreement. The agreement provided that Barker would be reinstated to employment after a ten-day suspension, but permitted the employer to move for termination without challenge through the grievance procedure if discipline was warranted within a one-year period. The union presented the agreement, entitled Stipulation of Settlement, to Barker that afternoon. The Stipulation of Settlement was signed by Barker, Porter and two employer representatives<sup>2/</sup>. Barker states that he was not represented by counsel at the meeting, was under stress, that he was coerced and restrained from making the right decision regarding signing the settlement and that he was "grossly

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<sup>1/</sup> This subsection prohibits employee organizations, their representatives of agents from: (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

<sup>2/</sup> The Stipulation is dated May 12, 1994, but two of the four signatures on the Stipulation are dated in handwriting 5/25/94.

underrepresented" by Local 97. Barker contends that Porter was intimidating and stated that he had to "...make a decision in life, hurry up, life is a gamble you win or lose." while persistently tapping her feet.

On September 19, 1994, UMDNJ again terminated Barker for poor work performance. A grievance was filed in September 1994 and a step II grievance hearing was held on October 11, 1994. Barker alleges that he never received a written explanation of the results of the hearing from Local 97 or UMDNJ. Local 97 states that it processed Barker's grievance regarding his termination in September, 1994 but did not take it to arbitration. Local 97 did not arbitrate the grievance because the May 1994 Stipulation of Settlement signed by Barker expressly waived his right to appeal to step III (arbitration) for any discipline during a one year period. Local 97 contends that Barker knowingly, willingly and voluntarily entered into the Stipulation of Settlement waiving his right to arbitrate grievances for one year.

Barker alleges that Local 97 ignored two grievances and did not process them in a reasonable time. The February 28, 1994 grievance occurred over six months before the charge was filed, and this allegation is therefore untimely N.J.S.A. 34:13A-5.4(c).

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]

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).

Barker has not presented any allegations or facts demonstrating discrimination, bad faith or arbitrary conduct on the part of Local 97. Barker alleges that Local 97 failed to process his grievances in "...a reasonable time..." but does not allege that the processing was untimely. Even if Local 97 had failed to process Barker's grievance in a timely manner, such action would, at best, be negligent, but negligence standing alone is insufficient to prove a breach of the duty of fair representation. Service Employees International Union, Local No. 579, AFL-CIO.

Barker also alleges that Local 97 representative Joan Porter coerced him into signing a May, 1994 Stipulation of Settlement resulting from his termination. Porter's negotiating the last chance agreement with the employer is not an unfair practice. Local 97 not only has a right to settle disputes with the employer, the Commission encourages such efforts. The settlement of labor disputes is the core of the Commission's statutory mission. N.J.S.A. 34:13A-2.; Westlake Education Assoc., D.U.P. No. 94-13, 19 NJPER 521 (¶24241 1993).


Barker contends that Porter's coercive behavior was stating that he had to "...make a decision in life, hurry up, life is a gamble you win or lose." while persistently tapping her feet. A statement by a union representative that a timely decision had to be made regarding whether to sign a settlement does not rise to the standard of coercive or threatening behavior. The terms of the Stipulation are clear and Barker does not dispute that both he and

Porter signed it. Barker also does not allege that he attempted to repudiate the agreement at any time prior to his second termination. I find that Barker has not alleged any facts that Porter coerced or threatened him into accepting the Stipulation, or that she misrepresented the terms of the agreement, thereby acting discriminatorily or in bad faith in representing his interests. UTU Local 33 and Earlie Gresham, D.U.P. No. 93-27, 19 NJPER 135, (¶24067 1993).

Finally, Barker alleges that he never received a written explanation from Local 97 of the results of the October, 1994 grievance hearing on his termination. Barker does not dispute that Local 97 grieved his termination, and under the terms of the May, 1994 Stipulation of Settlement, Local 97 and Barker waived the right to arbitrate the grievance. Local 97 made a good faith assessment in accordance with the language in the Stipulation of Settlement not to pursue the grievance further.

Based upon the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the remaining allegations of this charge against IBT Local 97. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: March 7, 1996  
Trenton, New Jersey