

D.U.P. NO. 94-47

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

In the Matter of

RWDSU, LOCAL 29,

Respondent,

-and-

Docket No. CI-94-36

CHARLES H. KOCH,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that a majority representative violated the duty of fair representation when it failed to pursue a grievance protesting a discharge to arbitration.

The Director determined that the majority representative's failure to proceed did not suggest that it acted arbitrarily, capriciously or in bad faith.

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Appearances:

For the Respondent,
Paul Freda, President/Business Manager

For the Charging Party,
Charles H. Koch, pro se

REFUSAL TO ISSUE COMPLAINT

On December 14 and 30, 1993, Charles Koch filed an unfair practice charge and an amended charge, respectively, against RWDSU, Local 29, alleging that it violated subsections 5.4(b)(1), (2), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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

Koch alleges that after May 14, 1993, Local 29 violated its duty of fair representation when it failed to pursue a grievance contesting his termination by the City of New Brunswick to binding arbitration, the final step of the negotiated grievance procedure between the City and Local 29. He also alleges that it "failed to investigate" other alleged "contract" violations pertaining to seniority, promotion, transfers, vacation, personal days and workweek provisions. Koch further alleges violations of his constitutional and statutory rights and protests other personnel actions occurring before June 14, 1993. Finally, Koch alleges that Local 29 failed to "properly represent" him and other unit employees concerning complaints filed with the Department of Public Employee Occupational Safety and Health. Koch included nine copies of complaints to the Department of Public Employees Occupational Safety and Health, other documents of the City of New Brunswick and grievances dated in 1992 and 1993.

Local 29 filed a statement of position denying it engaged in any unfair practice. It also asserts that it filed a grievance concerning Koch's termination and that on June 30, 1993, a Local 29 union official "presented a 45 minute defense" of Koch to the Department Director, urging that termination was not an appropriate employment action. After the meeting, Koch purportedly told the Local 29 representative that he "did not need the union and would do things his way." Koch repeated the statement at a regular membership meeting. Local 29 denies that Koch requested to proceed

to arbitration. Finally, Local 29 maintains that Koch requested the change from a permanent title to a provisional title in which he was employed at the time of his termination.

The grievance procedure provides for a meeting with the "employee's department head" at step one, and then a presentation to the personnel manager and City Administrator at steps two and three.

On March 15, 1994, I issued a letter tentatively dismissing the charge and amendment. On March 22, 1994, Koch filed a response, contesting facts surrounding the circumstances of his request to proceed to arbitration on his termination. Specifically, Koch alleges that he requested that his grievance proceed to arbitration.

Majority representatives must represent the interests of all unit employees without discrimination. New Jersey has adopted the standard set forth in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), for deciding duty of fair representation cases. D'Arigo v. N.J. State Bd. of Mediation, 228 N.J. Super. 189 (App. Div. 1988), rev'd 119 N.J. 74 (1990). The rule states:

...a breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, capricious or in bad faith.

[Vaca at 386 U.S. 190, 64 LRRM 2376].

See also, Union Cty. Coll. Chapter AAUP (Donahue), P.E.R.C. No. 85-121, 11 NJPER 374 (¶16135 1985).

The gravamen of Koch's charge is that Local 29 failed to pursue his discharge to arbitration, violating subsection 5.4(b)(1)

of the Act. Koch has not alleged any facts suggesting that Local 29 violated its duty of fair representation. A failure to pursue the case through the final step of the negotiated grievance procedure is not, absent more, a violation of a union's duty of fair representation. Koch has not indicated that Local 29 treated his grievance in an arbitrary or capricious manner. Similarly, a "failure to investigate" other contract violations connotes no more than mere negligence, which does not violate the duty of fair representation. Even assuming that Koch requested that his grievance proceed to arbitration, I cannot find that he has alleged facts suggesting that Local 29's failure to proceed constitutes an unfair practice.

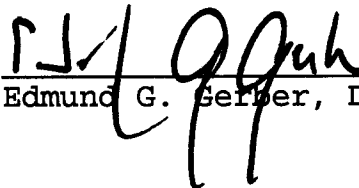
Koch has not alleged that Local 29 was apprised of the conditions which generated his filing of complaints with the Department of Public Employee Occupational Health and Safety and his allegations of refusal to process grievances on behalf of the negotiations unit. Even if Local 29 knew of Koch's filings, this allegation suggests, at most, mere negligence, and I decline to issue a Complaint and Notice of Hearing on it.

The Commission has no jurisdiction over Koch's claims that Local 29 violated his constitutional rights or other rights regarding the appointment of provisional employees, pursuant to Department of Personnel statutes. See also, City of New Brunswick and Charles Koch, D.U.P. No. 94-23, 20 NJPER 112 (¶25057 1994).

Finally, N.J.S.A. 34:13A-5.4(c) prohibits the Commission from issuing a complaint on any alleged unfair practice occurring more than six months before the charge is filed. Koch has alleged that Local 29 violated the Act in various incidents occurring before June 14, 1993. Because these events occurred more than six months prior to the filing of the charge, I refuse to issue a complaint regarding all of these allegations. The filing of a grievance does not toll the statutory period.

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Serber, Director

DATED: June 1, 1994
Trenton, New Jersey