

D.U.P. NO. 98-29

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

In the Matter of

UTILITY WORKERS UNION OF  
AMERICA, LOCAL 423,

Respondent,

-and-

Docket No. CI-98-21

JOSEPH FRANCIS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge brought by Joseph Francis, an individual. Francis alleged that the Utility Workers Union of America, Local 423 committed an unfair practice when it refused to arbitrate a grievance and dropped the grievance without his consent.

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Appearances:

For the Respondent,  
David A. Davis, attorney

For the Charging Party,  
Joseph Francis, pro se

REFUSAL TO ISSUE COMPLAINT

On October 2, 1997, Joseph Francis filed an unfair practice charge alleging that UWUA Local 423 violated 5.4b of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> Francis alleges that he filed a grievance on August 7, 1997 and the union refused to arbitrate the grievance and dropped the grievance without his consent.<sup>2/</sup>

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<sup>1/</sup> Although not specifically pled, the narrative of the charge alleges a violation of 5.4b(1) of the Act. This provision prohibits 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."

<sup>2/</sup> The grievance itself is dated August 5, 1997, although the charge cites the grievance date as August 7, 1997. The dates are not material to this dispute.

We have conducted an administrative investigation into the allegations of the charge. These facts appear.

UWUA Local 423 represents all non-supervisory operating, maintenance and clerical employees employed by the Somerset Raritan Valley Sewerage Authority. The Authority and Local 423 entered into a collective negotiations agreement effective from January 1, 1995 through December 31, 1998.

Article XXIII, entitled Grievance and Arbitration, provides for a four-step grievance process ending in arbitration. Step 1 provides that the employee shall discuss the grievance with his union steward and shall file it in writing with his supervisor within ten working days after the grievance arises. The next three steps require union approval for further processing of the grievance. The grievance procedure ends in binding arbitration of contractual disputes.

On July 30, 1997, Francis, an employee of the Authority who is represented by Local 423, received a warning letter relative to his failure to "lock out" a press while he was working on it. This failure allegedly constituted an OSHA violation. Francis disagreed with the warning letter and pursuant to Step 1 of the grievance procedure, filed a written grievance on August 5, 1997, with his supervisor seeking to have the letter removed from his personnel file. The Authority denied the grievance at this level.

Subsequently, a meeting was conducted between Francis, the union's chairman, Joseph Small, and Francis' two supervisors. After

the meeting, the union investigated the grievance and determined that the warning validly relates to an OSHA violation. It declined to pursue the grievance further because it determined it could not prevail. The union's decision was communicated to Francis.<sup>3/</sup>

#### ANALYSIS

It is alleged that when the union refused to arbitrate the grievance filed by Charging Party it violated its duty of fair representation. However, the charge fails to allege an unfair practice.

The standards for determining whether a union violated its duty of fair representation were first established by the United States Supreme Court in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). The Court in Vaca held that:

...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. 386 U.S. at 190, 64 LRRM at 2376.

The Supreme Court, subsequently, also held that to establish a claim of a breach of the duty of fair representation:

...carries with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives. Amalgamated Assoc. of Street, Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

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<sup>3/</sup> Francis states that he was "told in passing by the shop" of the union's determination not to pursue the grievance.

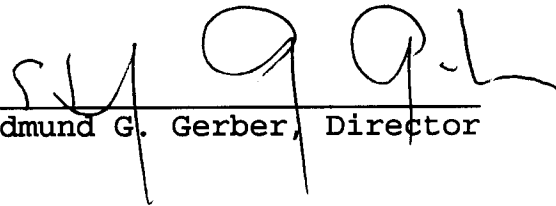
The Commission and the New Jersey courts have consistently embraced the Vaca and Amalgamated standards in adjudicating fair representation cases. See Saginario v. Attorney General, 87 N.J. 480 (1981); Belen v. Woodbridge Tp. Bd. Ed., 142 N.J. Super. 486, 491 (App. Div. 1976); Middlesex Cty., Mackaronis and NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. (6/16/82), recon. den. (10/5/82); FOP Lodge 94 and Cassidy, P.E.R.C. No. 91-108, 17 NJPER 347 (¶22156 1991); Fair Lawn Bd. Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98, (¶13040 1982); New Jersey Tpk. Ees. Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca; Essex-Union Joint Meeting. Francis has not alleged facts which, if true, would demonstrate that the Union's conduct was arbitrary, discriminatory or in bad faith.

The union's refusal to take the Charging Party's grievance to arbitration does not constitute an unfair practice.

Accordingly, I find that the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge.<sup>4/</sup>

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: January 9, 1998  
Trenton, New Jersey

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<sup>4/</sup> N.J.A.C. 19:14-2.3.