

D.U.P. NO. 94-13

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

In the Matter of

WESTLAKE EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-93-79

LEONARD KELLY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint on a charge filed by a teacher alleging that his majority representative, Westlake Education Association, breached its duty to fairly represent him. The charge asserted that the Association delayed moving his grievance to the third step of the grievance procedure while it attempted to settle the grievance with the Superintendent. The Director observed that unions not only have a right to attempt to settle disputes with the employer, but we encourage such efforts in accordance with the Commission's statutory mission.

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Appearances:

For the Respondent,
Jack Spear, NJEA Field Representative

For the Charging Party,
Leonard Kelly, pro se

REFUSAL TO ISSUE COMPLAINT

On May 6, 1993, Leonard Kelly, a teacher employed by the Union County Educational Services Commission, filed an unfair practice charge with the Public Employment Relations Commission alleging that his employee representative, the Westlake Education Association, violated subsection 5.4(b)(1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. Kelly charges that the WEA failed to properly represent him in the processing of a grievance alleging that he was improperly required

^{1/} This subsection 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."

to work evening hours without compensation. Kelley argues that, unlike other grievances, the WEA has not yet processed his claim to arbitration.

The WEA denies that it improperly processed Kelly's grievance or violated its statutory duty of fair representation to employees.

The current collective negotiations agreement between the employer and the WEA provides a four-step grievance procedure: step 1 is the school principal, step 2 is the Superintendent, step 3 is the Board of Education, and step 4 is advisory arbitration. The WEA initiated a step 1 grievance with the high school principal on February 23, 1993. The principal denied the grievance, and the WEA moved the grievance to step 2. At step 2, the WEA agreed to extend the time period in which the Superintendent was to reply in order to explore settlement of the grievance. Thereafter, the Superintendent denied the grievance, and the WEA has moved it to the third level. The Association has advised us that a hearing before the Board is scheduled for early September, 1993. Depending upon the outcome before the Board, the Association will then decide, based upon the merits of the grievance, if it wishes to pursue the grievance to step 4 -- advisory arbitration.^{2/}

^{2/} The WEA is not necessarily obligated to take every grievance to arbitration. A union must investigate the grievance and make a good faith judgement in determining its merits. Vaca

Majority representatives must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. A breach of the duty of fair representation occurs only when a representative's conduct toward a unit member is "arbitrary, discriminatory, or in bad faith." 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). The Commission and New Jersey Courts have consistently applied the Vaca standard in evaluating fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981); Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Loc. 153 (Thomas Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982).

Based upon these facts, I find no unfair practice. The WEA did initiate and process Kelly's grievance through the appropriate steps of the grievance procedure. It appears that Kelly's primary concern is the length of time it is taking to bring the matter to a conclusion. The WEA's decision to delay moving the grievance to the Board level was to explore settlement possibilities. The WEA not

2/ Footnote Continued From Previous Page

v. Sipes, 386 U.S. 171 (1967); N.J. Turnpike Employees Union, Local No. 194, IFPTE, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979). It may decline to process that grievance if the grievant's interpretation of the contract is contrary to the union's understanding of the contract or the general interest of the negotiations unit as a whole. Teamsters Local 102, P.E.R.C. No. 93-22, 18 NJPER 473 (¶23214 1992; Jersey City Medical Center, P.E.R.C. No. 88-6, 15 NJPER 640 (¶18240 1987).

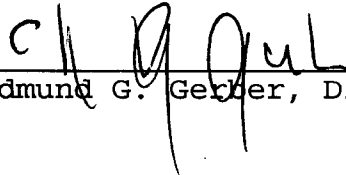
only has a right to attempt to settle disputes with the employer, but we encourage such efforts. The settlement of labor disputes is the core of this Commission's statutory mission. N.J.S.A.

34:13A-2. The New Jersey courts have also encouraged settlement of litigation. Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974).

Although the grievance remained at the second step of the grievance process pending the parties' efforts to voluntarily resolve it, there was no permanent harm to Kelly because, if successful, the grievance would produce purely a monetary award. Noting that the WEA has moved the grievance forward and is continuing to process it, I find that the charge does not meet the Commission's complaint issuance standards.

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: August 27, 1993
Trenton, New Jersey