

D.U.P. NO. 94-45

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

In the Matter of

GREATER EGG HARBOR REGIONAL BOARD
OF EDUCATION and OAKCREST-ABSEGAMI
TEACHERS ASSOCIATION,

Respondents,

-and-

Docket No. CI-94-24

LOUIS A. EMONDS, ET AL.,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint and Notice of Hearing on portions of a charge alleging that a majority representative violated the duty of fair representation and that a public employer negotiated in bad faith by agreeing to a wage increase smaller than increases negotiated for other unit employees.

The Director issues a Complaint and Notice of Hearing on the allegations that the Association and employer "colluded" to deny a grievance protesting a longevity payment.

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Appearances:

For the Respondent Board of Education
Cassetta, Taylor & Whalen
(Bruce Taylor, Consultant)

For the Respondent Teachers Association
New Jersey Education Association
(Eugene J. Sharp, UniServ Rep.)

For the Charging Party
Louis A. Emonds, pro se

DECISION

On October 13 and 25, November 12, 1993 and January 5, 1994, Louis Emonds filed an unfair practice charge and amended charges alleging that the Oakcrest-Absegami Teachers' Association and the Greater Egg Harbor Regional Board of Education violated various subsections of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

Emonds and other "Association members" allege that on or about September 15, 1993, the Association violated its "duty of fair representation" during collective negotiations and then refused to

process a grievance about placement on a salary guide to arbitration. Emonds also alleges that the Association violated N.J.S.A. 18A et seq. and "federal laws regarding affirmative action." The Association allegedly violated subsection 5.4(b) (1), (3) and (5) of the Act.^{1/}

Emonds alleges that the Board "deviated from the proper grievance procedure", demonstrating "bad faith" in September 1993. He alleges that the Board sought "the advice of the union rather than processing the grievance to the next step." Emonds also alleges that a 3-1 difference in a wage increase on the salary guide demonstrates "bad faith" in violation of subsection 5.4(a) (3), (5) and (7)^{2/} of the Act.

^{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. (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."

^{2/} These subsections prohibit public employers, their representatives or agents from: "(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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

On January 18, 1994, the Association filed a response, denying that it engaged in any unfair practice. The Association asserts that its decision not to pursue the matter to arbitration was a "good faith determination...that the subject of the grievance did not comply with the clear intent of the Association and Board...."

On February 14, 1994, the Board filed a response, denying that it engaged in any unfair practice. It denies refusing to process the grievance to which Emonds refers, noting that the Association has the obligation to invoke arbitration under the terms of the current agreement. It also denies any "collusion" with the Association regarding the grievance. The Board representative asserts that he "had discussions with Mr. Emonds' attorney when the grievance was first filed...." The Board further asserts that it is "fully prepared to arbitrate this matter."

On March 7, 1994, Mr. Emonds filed a letter disputing some matters raised in the Board's response.

Attached to the original charge are numerous documents, including a copy of the 1993-94 salary guide page of the Respondents' 1992-94 collective agreement. A handwritten notation purportedly written, signed and dated May 15, 1993 by an NJEA negotiator for the Association states, "Lou, no problem - The 3 years credited to you at initial hire are still counted. You don't lose anything." The next page in the agreement provides a longevity payment schedule. Similarly, Emonds filed a copy of a handwritten

message purportedly written by Jon Deegan, Board Superintendent, and dated May 17, 1993. The message, concerning Emonds, states, "Mr. Emonds should be recognized as 28 years in the District.

[unintelligible] page 39 C1a, b C-2."

Most of the charge and amended charge must be dismissed. N.J.A.C. 19:14-2.3. Emonds has alleged that the Association has violated the duty of fair representation in both the refusal to arbitrate his grievance and in collective negotiations, by negotiating a wage increase for his title that is allegedly one-third of the amount negotiated for at least one other title.

In Ford Motor Co. v. Huffman, 346 U.S. 330 (1953), the Court stated:

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. Ford Motor Co., at 338.

Absent evidence of bad faith or fraud, unions may make compromises which adversely affect some members of a negotiations unit and result in greater benefits for other members. The fact that a negotiated agreement results in less than complete satisfaction for one member of the unit does not establish a breach of the union's duty of fair representation. Belen v. Woodbridge Tp.

Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976); Lawrence Tp. PBA, Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15073 1983); Union City and F.M.B.A., P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982); Hamilton Tp. Ed. Assn., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978).

Emonds has not alleged any facts suggesting that in the course of negotiations, he was, essentially, singled out and treated with something less than "honesty of purpose." That his wage increase was less than what others in the unit received fails to establish a breach of the duty. Accordingly, I dismiss all of Emonds' allegations against the Association for its conduct during collective negotiations.

Similarly, I dismiss all allegations that the Board violated the Act by negotiating a provision which may have resulted in a smaller wage increase for Emonds' title than for other unit titles.

In Vaca v. Sipes, 386 U.S. 171 (1967), the Court prescribed a standard for determining whether a labor organization violates its duty of fair representation. The Court 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, capricious, or in bad faith.

[Id. at 190].

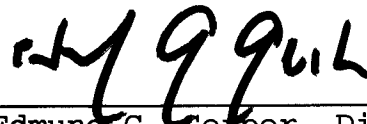
The Court also recognized that an individual employee does not have an absolute right to have his grievance taken to arbitration. New Jersey has adopted the Vaca standard in duty of fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981).

A majority representative's good faith determination not to pursue a grievance to arbitration is lawful. Emonds has enclosed two documents purporting to represent the Respondents' separate concessions that Emonds would be entitled to a benefit greater than that which he ostensibly received under Exhibit A-2, A, B and C of the 1992-94 agreement. These purported concessions, together with the allegation of "collusion" by the Association and Board to derail Emonds' grievance short of arbitration meets complaint issuance standards.

Accordingly, I order that a Complaint and Notice of Hearing be issued on the allegation(s) that the Association and Board "colluded" to prevent Emonds' grievance from proceeding to binding arbitration in violation of 5.4(a)(3) and (5) and 5.4(b)(1) of the Act.

The remainder of the charge and amended charge is dismissed.^{3/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: May 17, 1994
Trenton, New Jersey

^{3/} Emonds alleged that the Board and Association violated constitutional, federal and other state laws in connection with their alleged unfair practices. The Commission has no jurisdiction over these claims. Furthermore, no facts were asserted pertaining to "harassment" of Emonds. Accordingly, I decline to issue a Complaint and Notice of Hearing that the Board violated Emonds' rights under 5.4(a)(3) and (1) of the Act.