

D.U.P. NO. 98-37

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

In the Matter of

IBEW LOCAL 164,

Respondent,

-and-

Docket No. CI-98-9

KENNETH EASTON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge brought by Kenneth Easton against IBEW Local 164. Easton alleged that Local 164 committed an unfair practice when it failed to represent him in his pursuit of a promotion and claim for back pay. The Director found that the IBEW's representative investigated and considered the merits of Easton's claims for back pay and promotion, and that none of the alleged facts suggest discriminatory, bad faith or arbitrary conduct. Easton also claimed that the IBEW violated section 5.4(b)(2), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. However, the Director found that none of the alleged facts supported these allegations.

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Appearances:

For the Respondent,
Richard Dressler

For the Charging Party,
Kenneth Easton

REFUSAL TO ISSUE COMPLAINT

On August 18, and September 5, 1997, Kenneth Easton, an employee of Bergen Community College ("College"), filed an unfair practice charge and amended unfair practice charge, respectively, against his majority representative, Local 164, International Brotherhood of Electrical Workers, AFL-CIO ("Union" or "Local 164"). Easton alleges that from March to August 1997, Local 164 failed to represent him in his pursuit of a promotion and claim for back pay and, "...refused to represent [him] by believing a lie [about what Easton does.]" Easton alleges that by its conduct, Local 164 violated sections 5.4(b)(2), (3) and (5) of the New Jersey

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/} Local 164 denies that it has violated the Act.

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. Based upon the following, I find that the Complaint issuance standard has not been met.^{2/}

Easton is a senior clerk employed in the College's mail room. In June 1995, Easton was told that he would be promoted after his co-workers. In June 1996, Easton's co-workers were promoted, but as of August 1997, he had not heard anything further about his

^{1/} These provisions prohibit Employee organizations, their representatives or agents from: (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; and, (5) Violating any of the rules and regulations established by the commission. Additionally, under section 5.4b(1) of the Act, public employee organizations, their representatives and agents are prohibited from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. Easton did not specifically cite 5.4b(1), although it is raised by a reading of the charge.

^{2/} On May 15, 1998, we notified the parties of our intended decision and invited their responses. Neither party responded.

promotion. In March 1997, Easton was advised by the College's affirmative action officer that he was performing supervisory work and, under his union agreement, could be eligible for back pay for having performed out-of-title work. On March 14, 1997, Easton called Local 164's Business Manager Richard Dressler for assistance. At Dressler's request, Easton mailed Dressler copies of the official job description and a description of his current job duties. On March 21, 1997, by letter, Dressler confirmed his receipt of the information, and stated that he had contacted Mr. Hannah, the College's personnel officer, who conducted an investigation into the matter. On April 16, 1997, Dressler spoke to Easton's supervisor by phone. Shortly after, Dressler reported back to Easton, advising that Easton should raise the matter personally with the supervisor. Easton alleges that Dressler told Easton that he (Easton) was only a driver and did not believe that Easton was in charge when the supervisor was absent. Easton alleges that after their conversation in April 1997, Dressler stopped representing him and that Dressler said he did not have the time to personally visit Easton's workplace to observe Easton's duties.

The College and Local 164 had a collective negotiations agreement which was effective from July 1, 1993 to June 30, 1996; a successor agreement was reached in December 1996, but not printed at the time this charge was investigated.

The agreement contains a grievance procedure which ends in advisory arbitration at Article XXVII, 3.d. Step One of the grievance procedure states:

Within fifteen (15) working days after the occurrence giving rise to a grievance is known or should have been known the employee shall discuss the grievance informally with his immediate supervisor with the object of resolving the matter informally.

The agreement at Article XII, Placement on Salary Schedule, also contains the following clause concerning higher level work:

5. In the event that an employee is required to work at a higher level position than the one for which said employee was engaged, the employee shall, after three (3) weeks in the higher level position, be compensated at the higher rate until the position is permanently filled.

The agreement at Article XIV-Vacancies, New Positions, Transfers and Promotions, states, in relevant part:

3. All applicants shall be considered and those who meet the qualifications for the posted position will be interviewed. All applicants will be given a reply to their application. No position shall be filled until all properly submitted applications have been considered. The selection process will be completed within fifteen (15) working days of the expiration date of the postings; this time limit may be extended by mutual agreement.

There is no allegation that a vacant promotional position existed or had been posted prior to Easton's contact with Dressler in March 1997. Easton does not specifically allege that the College violated the terms of the agreement, or that a grievance should have been filed.

ANALYSIS

For the reasons expressed below, I find that Easton's charge does not set forth any violations of the Act. In these circumstances, Local 164 acted consistently with the standard for the duty of fair representation owed to a unit member.

N.J.S.A. 34:13-5.3 provides, in part:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.

Whenever a majority representative violates its duty to fairly represent a unit employee such a violation has been held cognizable under section 5.4b(1). In re Jersey City Bd. of Ed., D.U.P No. 81-13, 7 NJPER 180 (¶12079 1981).

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 [NJPER Supp. 2nd 113 (¶94 App. Div. 1982), certif. den. 91 N.J. 242 (1982)]; 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 at 13.]

See also, Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976). 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).

Employee organizations are entitled to a wide range of reasonableness in determining how to best service all of their members. For example, in Essex-Union Joint Meeting, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991) the Director decided that a union's decision not to take a grievance to arbitration was not, by itself, a violation of the union's duty of fair representation. And, in Camden County College, P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987), the Commission held that a "majority representative does not have the obligation to present every grievance which a unit member asks it to submit." In that case, the union investigated the grievance and reasonably found that it lacked merit. The Commission noted:

This does not mean that a majority representative has the absolute right to refuse to file a grievance. Rather, a refusal will be judged by the standard to determine whether a union breached its duty of fair representation: Did it act arbitrarily, discriminatorily or in bad faith? [Id. at 756.]

Accord, Carteret Educ. Ass'n., P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997) (Commission finds that the Association declined in

good faith to process employee's grievances and did not violate its duty to fairly represent him by not informing him that he could file grievances on his own). The duty of fair representation does not require a union to press non-meritorious grievances. Camden County College.

Here, Easton alleges that Local 164 did not pursue his claims vigorously enough. Local 164's representative was entitled to decide how to proceed to resolve the issue, as long as he did not act discriminatorily, arbitrarily or in bad faith. According to the charge, Dressler reviewed the documents, contacted the personnel officer and spoke to Easton's supervisor. It appears that Dressler investigated and considered the merits of Easton's claims for back pay and promotion. These alleged facts do not suggest discriminatory, bad faith or arbitrary conduct. I note that one of Dressler's suggestions - that Easton personally approach his supervisor - is the first step of the parties negotiated grievance procedure. That Dressler did not act in accordance with Easton's expectations, or achieve the results Easton desired, does not demonstrate bad faith. These alleged facts, even if proven true, do not constitute a breach of the duty of fair representation, nor would they be violations of 5.4b(1) of the Act.

Easton also alleges a violation of 5.4b(3) of the Act. No facts were alleged which support this allegation. Further, a majority representative's obligation to engage in good faith

collective negotiations runs solely to the public employer. Easton, an individual employee, has no standing to allege a violation of 5.4b(3). Op. of Berkeley, D.U.P. No. 86-2, 11 NJPER 543 (¶16190 1985).


Easton also alleges a violation of 5.4b(2) of the Act. No facts were alleged which support this allegation. Finally, although Charging Party has alleged a violation of 5.4b(5), he has not cited any rule or regulation which was violated.

Accordingly, based on the above, I find that the Commission's complaint issuance standard has not been met since none of the allegations in the charge, even if true, would constitute a breach of the duty of fair representation, or, a violation of 5.4b(1), (2), (3) or (5) of the Act.

ORDER

I decline to issue a complaint on the allegations of this charge.^{3/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: June 12, 1998
Trenton, New Jersey