

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

TEAMSTERS LOCAL 97 OF
NEW JERSEY,

Respondent,

-and-

DOCKET NO. CI-84-72

SAMUEL HOLMES,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an unfair practice charge alleging that the Charging Party's majority representative (1) refused to honor his written request to have dues deductions stopped as of a certain date, and (2) refused to process two grievances to arbitration on his behalf. With regard to the first allegation, Charging Party's majority representative, at an exploratory conference, agreed to tender to Charging Party an amount representing the total dues paid during the period in question, less the permissible agency shop fee. With regard to the second allegation, the Administrator determined that the majority representative had been prepared to go forth with arbitration proceedings, but adjourned them at Charging Party's request when a dispute arose over the order in which Charging Party wished his grievances to be addressed. Thus, the first issues appears moot, and the second does not appear to constitute arbitrary, discriminatory, or bad faith conduct on the part of the majority representative, and, accordingly, is not violative of the Act.

D.U.P. NO. 85-13

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Appearances:

For the Respondent
Patrick Nardolilli, Representative

For the Charging Party
Samuel Holmes, pro se

REFUSAL TO ISSUE COMPLAINT

On April 16, 1984, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by Samuel Holmes ("Charging Party") against Teamsters Local 97 of New Jersey ("Respondent") alleging that Respondent was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Specifically, Charging Party alleges that Respondent violated

N.J.S.A. 34:13A-5.4(b) (1), (2), (3), (4) and (5). ^{1/}

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

^{1/} N.J.S.A. 34:13A-5.4(b) 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. (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. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

For the reasons stated below it appears that the Commission's complaint issuance standards have not been met.

The charge as written is lengthy, and touches upon many issues; however, at an exploratory conference convened on July 30, 1984, Charging Party indicated that despite the written charge, only two issues formed the basis of his charge: (1) Respondent refused to honor his written request to have dues deductions stopped as of March 9, 1982, the date of his request, and continuing through June 22, 1983, the date of the termination of his employment; and (2) Respondent refused to process two grievances to arbitration on his behalf -- one involving an alleged improper rate of pay and the second dealing with his ultimate discharge.

With regard to the allegation of the improper processing of grievances, Charging Party alleges that Respondent refused to submit his grievances to arbitration because it would not agree to present the grievances in the precise manner that he wished them to be presented. Respondent had processed Charging Party's discharge grievance through the various steps of the grievance procedure and an arbitration was scheduled. However, Charging Party sought to have the arbitration stopped so that his allegation of improper rate of pay could first be arbitrated. Respondent disagreed with Charging Party's demands as to the order of arbitration, and the instant charge arose. The undersigned does not believe Respondent's conduct constitutes an unfair practice within the meaning of the Act. The Commission has determined that a

majority representative violates its duty to provide fair representation to unit members when it acts in an arbitrary, discriminatory or bad faith manner. In re Council No. 1, AFSCME, P.E.R.C. No. 79-28, 5 NJPER 21 (¶ 10013 1978). In In re N.J. Turnpike Employees Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶ 10215 1979), the Commission stated:

In considering a union's duty of fair representation, certain principles can be identified. The union must exercise reasonable care and diligence in investigating, processing and presenting grievances; it must make a good faith judgment in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. (footnote omitted).

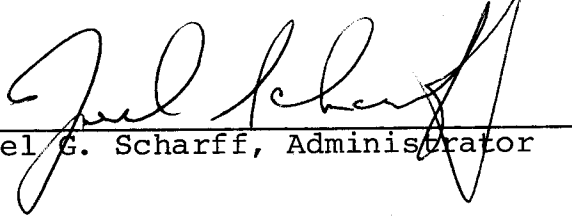
In the undersigned's judgment, the factual allegations of the charge do not support the conclusion that Local 97 engaged in conduct violative of its responsibilities. Local 97 is not required to pursue arbitration in accordance with a grievant's precise instruction, and such refusal does not, per se, constitute arbitrary, discriminatory, or bad faith conduct.

With regard to the second allegation, the undersigned notes that on July 31, 1984, pursuant to an agreement reached between Charging Party and the Local 97 representative at the July 30 exploratory conference in this matter, Respondent tendered to Charging Party an amount representing the total dues paid during the period March 9, 1982, through June 22, 1983, less the

permissible agency shop fee. ^{5/} Thus, this claim appears to be resolved.

Accordingly, based on the above, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS



Joel G. Scharff, Administrator

DATED: October 18, 1984
Trenton, New Jersey

^{5/} See Article I, Section 4 of the 1983-84 contract between the parking authority of the City of Paterson and Teamsters Local #286 providing for the collection of a representation fee in lieu of dues.