

D.U.P. NO. 94-3

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

In the Matter of

SAYREVILLE MUNICIPAL SUPERVISORS
ASSOCIATION,

Respondent,

-and-

Docket No. CI-93-75

JOSEPH E. RUDY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by a retired municipal employee who charged that his employee representative failed to represent him when it negotiated a sick leave buy-back provision in its new contract, which did not retroactively apply to former employees. The Director determined that it is neither uncommon nor illegal for a union to negotiate contract benefits which apply only to current unit employees.

Further, the union could not be held responsible for a promise the employer representative allegedly made to the employee that he would receive the sick-leave buy-back benefit.

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Appearances:

For the Respondent,
Robert Lahrman, President

For the Charging Party,
Joseph E. Rudy, pro se

REFUSAL TO ISSUE COMPLAINT

On April 1, 1993, Joseph Rudy, a retired employee of the Borough of Sayreville, filed an unfair practice charge against the Sayreville Municipal Supervisors Association. Rudy alleges that the Association violated subsections 5.4(b)(3) of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,^{1/} by failing to represent him when it negotiated a sick leave buy-back clause in its successor contract with the Borough which did not apply to Rudy.

^{1/} This subsection prohibits employee organizations, their representatives or agents from: "(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."

Rudy retired from the Borough in April, 1992. At that time, the Association was negotiating a successor contract with the Borough. The Association's proposals included a new sick-leave buy-back program for unit employees. Eventually, the Association reached agreement with the Borough, and the parties signed a settlement agreement on July 1, 1992. That agreement provided that, "Effective upon execution of this agreement" employees would be entitled to payment for a percentage of their unused sick leave (up to certain specifically detailed maximum payments) upon retirement.

By its terms, this portion of the parties' contract does not provide for retroactive benefits to persons who are no longer employed by the Borough. Rather, the clause limits the sick leave buy-back benefit to current employees, payable upon their retirement. Rudy alleges that the Association's agreement to this clause amounts to a failure to fairly represent him. He argues that the Association acted in bad faith and in "cohesion" with the Borough to save \$12,000 in retroactive benefits which would have mainly applied to Rudy.

The Association asserts that it negotiated an agreement which it believed was in the best interests of all its members. Rudy and at least one other unit supervisor retired before the contract was finalized. The Association points out that it did succeed in obtaining retroactive wage increases, which Rudy received.

A majority representative must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967).

The New Jersey Supreme Court in Lullo v. IAFF, 55 N.J. 409 (1970), relying on federal decisions interpreting the National Labor Relations Act, endorsed the duty of fair representation principle set forth in Vaca. The Court stated that, while the exclusive representative has the sole right to negotiate a contract for all unit employees,

...the right to do so must always be exercised with complete good faith, with honesty of purpose and without unfair discrimination against a dissident employee or group of employees. (55 N.J. at 427, 428) (Emphasis added).

Here, the Association did not act inconsistently with the standard for the duty of fair representation for contract negotiations. 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.

Thus, 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).

While Rudy may believe that the Association acted in bad faith by not securing more lucrative benefits for its former members, we do not find anything illegal in the Association's actions. It is neither uncommon nor unlawful for an employee representative to negotiate an agreement which restricts retroactive benefits to current unit employees. See Mercer Cty., D.U.P. No. 92-19, 18 NJPER 297 (¶23126 1992).

Rudy further asserts that the Township Administrator represented to him in October 1992, that he would be eligible for the sick-leave buy-back payment. However, the Association denies that it was aware of any such representation by the Borough. Even assuming the accuracy of Rudy's assertion, the Association cannot be held accountable for promises made by the Borough, particularly after the contract was executed. Rudy has not alleged facts to show

that the Association acted fraudulently, arbitrarily or in bad faith. The mere fact that the Rudy was dissatisfied with the outcome of his majority representative's negotiations efforts does not establish a breach of the duty of fair representation.

I find that the Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations of this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: July 22, 1993
Trenton, New Jersey