D.U.P. NO. 94-36

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

In the Matter of

NEW JERSEY TRANSIT
& TWUA, LOCAL 225,

Respondents,

-and- Docket No. CI-94-16

FELIX A. GUILLERMO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Felix A. Guillermo against New Jersey Transit and TWUA, Local 225. The Director finds that: 1) several allegations are untimely; 2) the union's failure to take his case to arbitration does not constitute an unfair practice and 3) Guillermo failed to provide any support for his (a)(1) allegation against New Jersey Transit.

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Appearances:

For the Respondent New Jersey Transit
Deborah T. Poritz, Attorney General
(David S. Griffiths, Deputy Attorney General)

For the Respondent TWUA
Fred Schaefer, President

For the Charging Party
Collins & Berman, attorneys
(Henry F. Collins, III, of counsel)

REFUSAL TO ISSUE COMPLAINT

On September 2, 1993, Felix A. Guillermo filed an unfair practice charge against New Jersey Transit and the Transport Workers Union of America, Local 225, alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The charge against New Jersey Transit alleges a violation of subsection 5.4(a)(1).[1/] The charge against Local 225 alleges violations of

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1/ This subsection prohibits public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

subsections (b)(1) and (5).[2/]

Specifically, Guillermo alleges that on October 10, 1987, New Jersey Transit asked him to return all his bus driver equipment and that on May 23, 1989, New Jersey Transit did not provide him proper instructional training. He also alleges that on June 13 and December 13, 1989, he was wrongfully discharged, and that from May 25, 1989 through February 26, 1993, Local 225 failed to do anything for him. Finally, he claims that on March 16, 1993, he was wrongfully discharged for having only one chargeable accident after 14 years of loyal service. He claims that other drivers had chargeable accidents and were discharged, but were later reinstated. He also claims that his union wrongfully refused to take his case to arbitration, as it took everyone else's case to arbitration.

New Jersey Transit responds that all but one of the allegations in Guillermo's charge are untimely, as they refer to events which occurred more than six months prior to the date the charge was filed. As to the one timely allegation, involving Guillermo's March 1993 discharge, it was challenged through the grievance procedure, although not advanced to arbitration. Thus, according to New Jersey Transit, Guillermo has alleged, at most, a

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2/ 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. (5) Violating any of the rules and regulations established by the commission."

mere contract violation which the Commission has traditionally declined to entertain as an unfair practice.

Local 225 claims that it has continuously represented Guillermo in good faith throughout his employment at New Jersey Transit. It points out it got him his job back in 1992, after New Jersey Transit had found him unable to perform his duties as the result of a bus accident. It also represented him through three steps of the grievance procedure with respect to a warning he received from a January 5, 1993 chargeable accident. With respect to Guillermo's March 1993 discharge, Local 225 claims it filed a grievance and processed it through three steps of the grievance procedure; the fourth step is arbitration. Local 225 then provided Guillermo the opportunity to appear before its Executive Board to present his case as to why the union should take his grievance to arbitration. After his presentation, the Executive Board deliberated over the merits of his grievance for 1 1/2 hours before finally voting not to pursue arbitration. Local 225 denies that Guillermo was treated differently then other union members. According to Local 225, it treated Guillermo's grievance as any other, carefully considering its merits before deciding whether it merited arbitration. It denies that it takes every grievance to arbitration.

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N.J.S.A. 3413A-5.4(c) provides:

...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to

> the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

See No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 955 (¶4026 1977); N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

Guillermo's allegations regarding actions that took place on October 8, 1987, May 23, 1989, June 13, 1989, and December 13, 1989 are all untimely, as is the allegation that from May 25, 1989 through February 26, 1993 Local 225 did not do anything for Guillermo. The charge was filed September 2, 1993; all of these alleged actions took place outside the six-month period specified in N.J.S.A. 34:13A-5.4(c). Moreover, there are no allegations which indicate that Guillermo was prevented from filing a charge with respect to these events during the six-month period. Therefore, I dismiss these allegations as untimely. N.J.S.A. 34:13A-5.4(c).

With respect to the allegation involving Guillermo's March 16, 1993 discharge and Local 225's refusal to take his case to arbitration, I also dismiss it for the following reasons.

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

> 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 interests of all such employees without discrimination and without regard to employee organization membership.

A breach of the duty of fair representation occurs only when a union'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 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). The fact that a union's decision results in a detriment to one unit member does not establish a breach of the duty. Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); Essex-Union Joint Meeting and Automatic Sales, Servicemen & Allied Workers, Local 575 and Brian McNamara, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991). Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca; Essex-Union Joint Meeting. Rather, a union is allowed "wide range of reasonableness" in servicing its members. Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953); Essex-Union Joint Meeting.

Based on the foregoing, the union's failure to take Guillermo's case to arbitration is not, by itself, an unfair practice. Local 225 took his case through three steps of the

grievance procedure. It then gave Guillermo the opportunity to appear before its Executive Board and present his reasons why it should take his grievance to arbitration. Apparently then, the union deliberated over whether it merited arbitration and decided not to pursue Guillermo's case to arbitration. As stated previously, a union is not obligated to bring every case to arbitration. Vaca; Essex-Union Joint Meeting. Here, no evidence or facts were alleged showing conduct that is "arbitrary, discriminatory or in bad faith." Moreover, no evidence or facts were alleged showing discrimination that is intentional, severe, and unrelated to legitimate union objectives. Amalgamated Assn; Essex-Union Joint Meeting. Rather, Local 225 acted within its "wide range of reasonableness" in servicing Guillermo. Ford Motor Co., Essex-Union Joint Meeting.

Finally, Guillermo fails to provide any support for his (a)(1) allegation against New Jersey Transit. An employer violates subsection 5.4(a)(1) if its actions tend to interfere with an employee's statutory rights and lack a legitimate and substantial business justification. Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). Here, there are no facts or evidence showing that New Jersey Transit's actions tended to interfere with Guillermo's statutory rights, as New Jersey Transit processed Guillermo's grievance regarding his discharge through three steps of the grievance procedure. Local 225 then decided not to arbitrate it.

Therefore, I find that the Commission's complaint issuance standard has not been met. N.J.A.C. 19:14-2.1. Accordingly, I decline to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: March 29, 1994
Trenton, New Jersey