D.U.P. NO. 97-29

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

In the Matter of

BOROUGH OF HADDONFIELD &
TEAMSTERS LOCAL UNION NO. 676,

Respondent,

-and-

Docket No. CI-97-30

CARROLL E. GERKEY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by Carroll E. Gerkey against the Borough of Haddonfield and Teamsters Local Union No. 676. The Director finds that the charge against the Borough is untimely and that it fails to set forth an unfair practice under the Act. Further, the Director finds that the chare against the Teamsters fails to set forth a breach of the duty of fair representation.

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Appearances:

For the Respondent, Borough of Haddonfield
Richard B. Schwab, Borough Administrator

For the Respondent, Teamsters Local Union No. 676
Vincent Buondonno, Vice President/Business Agent

For the Charging Party,
Carroll E. Gerkey, pro se

REFUSAL TO ISSUE COMPLAINT

On November 7, 1996, Carroll E. Gerkey filed an unfair practice charge with the Public Employment Relations Commission and on December 6, 1996, amended the charge. Gerkey alleges that the Borough of Haddonfield violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2) and (4)[1/] when it

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1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

wrongfully terminated him on December 28, 1995, since there was no documentation from any physician stating that he would not physically perform his job. Also, Gerkey alleges that Teamsters Local Union No, 676 violated subsections 5.4(b)(1), (2), (3) and (5)[2/] of the Act when its vice president, Vincent Buondonno, misled him about his right to initiate arbitration.

We have conducted an administrative investigation into the allegations of the charge. These facts appear.

Carroll E. Gerkey was terminated from his position of Water Plant Operator on December 28, 1995 because of physical restrictions which, in the Borough's opinion, prevented him from performing his job.

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. "

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

A grievance was filed on December 29, 1995, which was denied; Gerkey then requested that Local Union No. 676 pursue the grievance to arbitration. On June 25, 1996, the Executive Board of the Union reviewed the grievance, but declined to persue arbitration because it determined it would not prevail.

ANALYSIS

For the following reasons, Gerkey's allegation against the Borough is hereby dismissed.

N.J.S.A. 34:13A-5.4(c) provides:

> that 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.

Here, the alleged unfair practice by the Borough occurred almost a year ago, on December 28, 1995, and thus is well beyond the six-month statute of limitations set forth in N.J.S.A. 34:13A-5.4(c). See, e.g., Certified Shorthand Reporters, et al., D.U.P. No. 97-14, 22 NJPER 336 (¶27175 1996). In any event, the allegation that the Borough's termination of Gerkey was unlawful because there was no documentation from a physician stating that he could not perform his job, fails to set forth an unfair practice under the Act.

Further, Gerkey's allegations against Local Union No. 676 are also dismissed.

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.

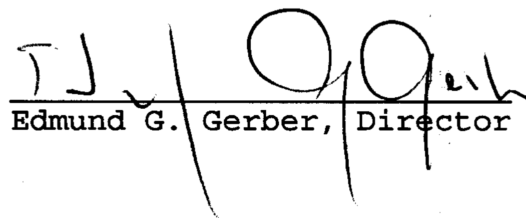
Based on the foregoing, the Union's refusal to take Gerkey's case to arbitration does not constitute an unfair practice. The Executive Board of the Union considered the grievance

and made a good faith determination not to take it to arbitration, because it thought it would not prevail. 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 Ass'n; Essex-Union Joint Meeting. Rather, Local Union No. 676 acted within its "wide range of reasonableness" with respect to Gerkey. Ford Motor Co.; Essex-Union Joint Meeting.

Accordingly, based on the foregoing, I find the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge.[3/]

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: December 31, 1996
Trenton, New Jersey

3/ N.J.A.C. 19:14-2.3.