

D.U.P. NO. 93-7

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

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

JERSEY CITY EDUCATION ASSOCIATION,

Docket No. CI-91-60

Respondent,

-and-

GREGORY FRANCIS JUDGE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed against the public employer and majority representative. The charge alleged that the majority representative failed to process two grievances to binding arbitration and the public employer did not respond to the charging party's request to take the matter to arbitration.

The Director determined that the majority representative's acts did not violate the duty of fair representation and the charging party was not contractually authorized to go forward to arbitration on his own initiative. D'Arrigo v. N.J. State Board of Mediation, 119 N.J. 74 (1990). He also determined that no facts suggested that the public employer violated the Act.

Accordingly, the charge was dismissed.

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Appearances:

For the Respondent Board of Education  
Murray, Murray & Corrigan, attorneys  
(David F. Corrigan, of counsel)

For the Respondent Education Association  
Feintuch, Porwich & Feintuch, attorneys  
(Philip P. Feintuch, of counsel)

For the Charging Party,  
Gregory Francis Judge, pro se

REFUSAL TO ISSUE COMPLAINT

On April 8, 1991, Gregory Francis Judge filed an Unfair Practice Charge against the Jersey City Education Association. The charge alleges that the Association unlawfully refused to process two grievances to binding grievance arbitration. The charge also alleges that the Jersey City Board of Education did not respond to

his request to pursue the grievance to arbitration. These actions allegedly violated N.J.S.A. 34:13A-1 et seq.<sup>1/</sup>

The Board and the Association filed responses denying that they each engaged in unfair practices. The Association in particular asserted that it processed the grievances through the first three steps of the contractual procedure and then the grievance committee "determined that the chances for success at arbitration did not warrant taking this grievance to that level."

The Board asserted that it is not obligated to process all employee grievances to arbitration; it is obliged to process only those which the majority representative pursue according to the terms of the applicable collective agreement.

On June 25, 1992, I issued a letter tentatively dismissing the charge. Judge requested and was granted an extension of time in which to reply to my letter. On July 27, 1992, Judge requested another extension of time. No additional statement has been filed.

I refuse to issue a complaint on the charge. The Commission has often found that a union's refusal to process a case to arbitration does not violate the Act, assuming that its reasons are not "arbitrary, discriminatory or in bad faith." 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 (1976). No

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<sup>1/</sup> The charge did not enumerate which subsections of the Act were violated. This decision assumes that appropriate subsections are enumerated.

facts have been alleged, other than the mere refusal to advance the matter to arbitration, showing that the Association acted in violation of Vaca standards. See also, OPEIU Loc. 153 (Thomas Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

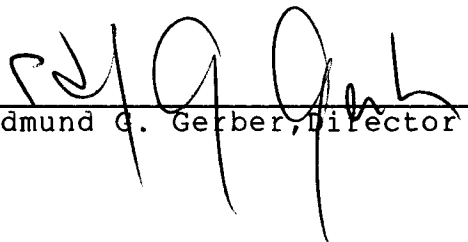
Article 2 of the applicable agreement is the "Individual Grievance Procedure" and permits "any employee...to present his or her grievance through the steps described in the following paragraphs...." Step 1 provides for a meeting of the aggrieved employee and the building principal. Step 2a permits a dissatisfied grievant to present the grievance to the Association "grievance evaluation team", which in turn rules on its merits. If the team determines that the grievance is meritorious, it may present a written statement to the Assistant Superintendent in charge of personnel, who responds in writing at step 2b. Step 3 permits the dissatisfied grievant to appeal to the Superintendent and Board, and they respond in writing to the grievant, Assistant Superintendent and to the Association "grievance evaluation team." Step 4 permits the grievant to request arbitration. The arbitration decision "shall be submitted to the Board and the Association and shall be final and binding on both parties." Furthermore, the cost of the arbitration is to be paid by the "unsuccessful party."

The applicable grievance procedure does not "clearly empower an employee to go forward to arbitration on his own initiative." D'Arrigo v. N.J. State Board of Mediation, 119 N.J. 74 (1990). As the grievance procedure unfolds, the Association

grievance evaluation team assumes a critical role -- it decides whether to pursue the matter from step 2a to 2b. A step 3 decision is not filed with the grievant. Finally, the arbitration decision is submitted to the "parties", i.e., the Board and Association, and the cost is paid by the losing "party." This procedure is not consistent with an unfettered right of an individual grievant to pursue a matter to arbitration.

Accordingly, the charge does not set forth facts justifying the issuance of a complaint against the Association or for that matter, the Board. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: August 21, 1992  
Trenton, New Jersey