D.U.P. NO. 92-27

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

In the Matter of

MORRISTOWN MUNICIPAL EMPLOYEES ASSOCIATION,

Respondent,

-and-

Docket No. CI-92-25

DONALD G. LIDDLE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a municipal employee's unfair practice charge alleging that his employee representative violated the Act by failing to represent him at a disciplinary hearing. The Director finds that while the union did not participate in the employee's disciplinary hearing, it financed the employee's representation by his own private attorney, who did represent him at the disciplinary hearing.

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Appearances:

For the Respondent,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Paul L. Kleinbaum, of counsel)

For the Charging Party,
Donald G. Liddle, pro se

REFUSAL TO ISSUE COMPLAINT

On October 30, 1991, Donald Liddle, a former employee of the Town of Morristown, filed an Unfair Practice Charge with the Public Employment Relations Commission against his employee representative the Morristown Municipal Employees Association. Liddle alleges that the MEA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1)[1/] by breaching its duty to fairly represent him in a termination hearing before the Town's hearing officer.

1/ This subsection 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."

Liddle was suspended for 45 days on January 9, 1991. On February 11, 1991, he was given a termination notice. After several postponements, a hearing on both the suspension and the termination was conducted on September 27, 1991, before the employer's hearing officer. The MEA did not represent Liddle at the hearing. Liddle charges that the MEA's failure to represent him at the hearing violated the Act.

However, several months prior to the hearing, Liddle and the MEA agreed the MEA would reimburse Liddle for representation by Liddle's own private attorney.[2/] Liddle's attorney represented him at the suspension/termination hearing.

On April 23, 1992, I wrote to the parties, indicating my preliminary finding that the allegations in the charge did not meet the Commission's Complaint issuance standards and indicating that I intended to dismiss the charge. Liddle filed a letter with the Commission on May 5. Liddle alleges that he never agreed to the union's offer of reimbursement of his private attorney to represent him in the disciplinary matter. He alleges that the MEA's reimbursement of his private attorney, which was limited to 15 hours of attorney's time, was insufficient to cover his attorney's representation at the termination hearing. Further, Liddle argues that he expected union representation at the September 27 disciplinary hearing.

2/ The agreement limited the MEA's obligation to pay for fifteen hours of the attorney's time.

However, Liddle does not deny that he did, in fact, secure the services of his own attorney to represent him concerning the discipline. Nor does he deny accepting the MEA's reimbursement of that attorney. The argument that the MEA's reimbursement was insufficient to fully cover the cost of the Liddle's representation in the termination matter does not constitute a violation of the Act.

I find that nothing in this charge suggests that the MEA breached its duty to represent Liddle at his termination hearing.

N.J.S.A. 34:13A-5.3 sets forth the union's duty to fair represeent employees:

> 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 interest 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 Commission and New Jersey Courts have consistently applied the Vaca standard in evaluating fair representation cases. Saginario v. Attorney General, 87 N.J. 480 (1981); Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Loc. 153 (Thomas Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). A union

must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. OPEIU Local 153; Middlesex Cty. Bd. of Freeholders, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (4/1/82), pet. for cert. den. (6/16/82).

An employee representative does not have an absolute obligation to defend every disciplinary matter through all levels of an appeal process. Rather, an employee representative has the right to review the merits of each individual's grievance and decide which claims it believes are appropriate to challenge based upon their merits.

Here, the MEA did not appear at the Liddle's disciplinary hearing, but financed Liddle's private attorney to represent him instead. The MEA did not have to provide open-ended financing for Liddle's representation in the disciplinary matter. The MEA had the right to limit the financing of Liddle's disciplinary appeal process to what it believed was reasonable based upon the merits of Liddle's claim. Nothing in the charge suggests that Liddle was treated differently than other employees facing disciplinary hearings, or that the union otherwise acted arbitrarily, discriminatorily or in bad faith.

Secondly, Liddle asserted that the employer failed to give him preliminary notice of discipline prior to the termination notice, in violation of N.J.S.A. 4A:2-2.5. This issue is a matter

for the New Jersey Department of Personnel Merit System Review Board, and is not within this Commission's jurisdiction.3/

Finally, Liddle alleged in his May 5 submission that the MEA also failed to represent him in a disciplinary hearing before the an administrative law judge in 1990. N.J.S.A. 34:13A-5.4(c) prohibits the issuance of a complaint based upon events occurring more than six months prior to the filing of the charge.

Based upon the foregoing, I conclude that the charging party has not alleged facts which would not constitute an unfair practice and, in accordance with N.J.A.C. 19:14-2.1 and 2.3, I refuse to issue a complaint and dismiss this charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: June 24, 1992
Trenton, New Jersey

3/ This allegation of wrongdoing by the employer was raised for the first time in May 1992, and is outside this Commission's six-month statute of limitations. N.J.S.A. 34:13A-5.4(c).