

D.U.P. NO. 94-22

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

In the Matter of

NEW JERSEY SPORTS & EXPOSITION  
AUTHORITY AND SPORTS ARENA EMPLOYEES,  
LOCAL 137, AFL-CIO,

Respondents,

-and-

Docket No. CI-93-76

JUDITH LEE PARO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint and Notice of Hearing on a charge filed against a public employer and a public employee representative. Judith Paro alleged that the New Jersey Sports and Exposition Authority retaliated against her by "fabricating" a disciplinary notice (of termination) based on a 1990 incident and that the union violated its duty of fair representation during the processing of the grievance protesting her termination.

The Director determined that the charge failed to allege facts suggesting that the Authority acted because Paro pursued her rights under the Act, including her filing a charge. The Director also determined that the majority representative did not violate its duty of fair representation. The charge was dismissed.

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Appearances:

For the Respondent Authority,  
Genova Burns, attorneys  
(Nathaniel Ellison, of counsel)

For the Respondent Local 137,  
David Seliger, attorney

For the Charging Party,  
Judith Lee Paro, pro se

REFUSAL TO ISSUE COMPLAINT

On April 19, May 26 and August 7, 1993, Judith Lee Paro filed an unfair practice charge and amended charges alleging that her employer, New Jersey Sports and Exposition Authority, and the majority representative, Sports Arena Employees, Local 137, AFL-CIO, engaged in unfair practices. She alleges that on October 28 and 29, 1992, the Authority violated subsection 5.4(a)(4) of the Act<sup>1/</sup> by

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<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: "(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."

either "fabricating a disciplinary notice or brought charges based on an incident occurring in 1990." She alleges that Local 137 failed to represent her in the processing of her grievance, violating subsection 5.4(b)1)<sup>2/</sup> of the Act.

Attached to the original charge is a "warning notice" for alleged insubordination on October 29, 1992, a follow-up letter from the Director of Admissions, advising of an "indefinite suspension, pending a hearing," and another letter (dated November 3, 1992) advising of termination after a hearing attended by the charging party, Local 137 and the Authority.

On May 22, 1993, Paro submitted a copy of a letter from a physician (dated May 17, 1993) for a mental health care provider advising of Paro's "bi polar disorder", "a chronic condition", which, untreated, may result in "angry outbursts and oppositional behavior."

Local 137 filed a letter advising that it had represented Paro at "each step of the grievance procedure" and then determined in "good faith" that the grievance was not "winnable" at arbitration.

Paro filed an amended charge alleging that the Authority failed to provide her a promised letter about the suspension.

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<sup>2/</sup> This subsections 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."

The Authority filed a letter stating that Paro was terminated after a step 3 hearing, pursuant to the collective agreement. The hearing was conducted on November 20, 1992, and the Authority rendered its decision on November 25. It denies engaging in any unfair practice.

The grievance procedure of the current agreement of the respondents provides "the right to submit said grievance to arbitration" (Article XX).

Paro has alleged no facts suggesting that the Authority acted against her because she pursued her rights under the Act, including her filing of the charge. The charge against the Authority must be dismissed.

Majority representatives must represent the interests of all unit employees without discrimination. New Jersey has adopted a standard set forth in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), for deciding duty of fair representation cases. D'Arrigo v. N.J. State Bd. of Mediation, 228 N.J. Super. 189 (App. Div. 1988), rev'd 119 N.J. 74 (1990). The rule states,

...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, capricious or in bad faith.

[Vaca at 190, 64 LRRM 2376].

See also, Union Cty. Coll. Chapter, AAUP (Donahue), P.E.R.C. No. 85-121, 11 NJPER 374 (¶16135 1985).

Paro has not alleged any facts suggesting that Local 137 acted arbitrarily, capriciously or in bad faith. No facts suggest that its decision not to pursue the termination to binding

arbitration violated the law. A union may properly determine that such grievances have no merit. The facts show that until that decision was made, Local 137 had represented Paro in good faith at intermediate steps of the grievance procedure. Any information about Paro's health as a factor in mitigation of the penalty should have been provided to the respondents before the decision on arbitration was made. Even if Local 137 knew about Paro's purported condition before it decided against arbitration, that fact, standing alone, does not meet the Complaint issuance standard.

I dismiss the case in its entirety.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Edmund G. Gerber, Director

DATED: January 19, 1994  
Trenton, New Jersey