

D.U.P. NO. 93-12

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

In the Matter of

INTERNATIONAL SOCIETY OF
SKILLED TRADES,

Respondent,

-and-

Docket No. CI-92-108

STEPHEN G. GASSLER, JR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint against the International Society of Skilled Trades filed by Stephen G. Gassler, Jr., an individual union member. The charge alleges that the ISST breached its duty of fair representation by refusing to take Gassler's grievances to binding arbitration.

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

In the Matter of

INTERNATIONAL SOCIETY OF
SKILLED TRADES,

Respondent,

-and-

Docket No. CI-92-108

STEPHEN G. GASSLER, JR.,

Charging Party.

Appearances:

For the Respondent,
Gregory Feeney, Business Agent

For the Charging Party,
Stephen G. Gassler, Jr., pro se

REFUSAL TO ISSUE COMPLAINT

On June 19, 1992, Stephen G. Gassler, Jr. filed an unfair practice charge with the Public Employment Relations Commission against the International Society of Skilled Trades ("ISST") alleging that the ISST, through the actions of President Henry Schickling, violated subsections 5.4(b)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The charge alleges that Mr. Schickling indicated certain grievances were submitted to arbitration when they were not and that he refused to process certain grievances.

^{1/} 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."

The ISST asserts that it did not breach its duty of fair representation regarding Gassler's grievances and that the matters brought to its attention were handled properly.

The first grievance which the charging party contends was improperly handled involved the allocation of overtime. The ISST grieved this matter for Gassler and three other employees in January 1992. The employer, the City of Linden, acknowledged that a mistake had occurred and that it would make the affected employees whole by assigning them the next available overtime allotment. Since this grievance was settled, the ISST had no reason to pursue the issue to arbitration.

The second grievance which the ISST processed for Gassler involved the denial of a promotion to the position of Supervisor of Landfill. This grievance is pending at the arbitration level of the grievance procedure, awaiting the arbitrator's scheduling of a hearing date.

The third disputed issue involved Gassler's not getting appointed to the position of Sanitary Inspector. This title is not in the ISST's unit. Although the ISST filed and processed a grievance concerning the denial of Gassler's promotion to Sanitary Inspector, it declined to take the grievance to arbitration.^{2/}

^{2/} Gassler has accepted the ISST's determination not to take this matter to arbitration and he is pursuing the denial of the promotion to Sanitary Inspector through the New Jersey Department of Personnel with a privately retained attorney.

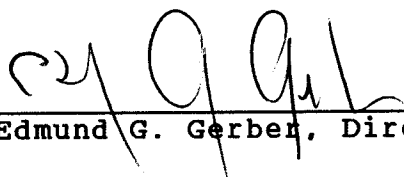
An employee representative is not obligated to bring every grievance to arbitration, but must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. A breach of the duty of fair representation occurs only when a representative's conduct toward a unit member is "arbitrary, 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). Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca v. Sipes. Rather, an employee representative is allowed a "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).

Based upon the allegations of the charge and the foregoing analysis, the ISST has not breached its duty of fair representation to Gassler. Amalgamated Transit Union, Div. 821, P.E.R.C. No. 91-26, 16 NJPER 517 (¶21226 1990); Essex-Union Joint Meeting and Automatic Sales, Servicemen and Allied Workers, Local 575, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991); AFSCME, Co. 52, D.U.P. No.

86-14, 12 NJPER 316 (¶17121 1986). The matters which Gassler brought to the ISST's attention have been reasonably pursued. Gassler has not alleged facts which indicated that the ISST acted arbitrarily, discriminatorily or in bad faith. The overtime grievance was properly treated and settled.^{3/} The grievance concerning the promotion denial to the Landfill Supervisor position is being taken to arbitration. The final issue -- regarding how the City filled the Sanitary Inspector position -- was grieved by the ISST. However, the ISST's decision not to arbitrate that dispute, which concerned a promotion to a non-bargaining unit position, does not violate the Act. Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 87-117, 13 NJPER 282 (¶18118 1987).

Accordingly, the Commission's complaint issuance standard has not been met and I decline to issue a complaint in this matter. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerben, Director

DATED: October 29, 1992
Trenton, New Jersey

^{3/} Although Gassler may not like or agree with the settlement, such dissatisfaction is not a sufficient basis to find that the union breached its duty of fair representation. AFSCME, Co. 52.