D.U.P. NO. 97-24

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

In the Matter of

BEVERLY WILLIAMS, UNION PRESIDENT

Respondent,

-and- Docket No. CI-96-69

KAREN TIMBERLAKE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by an employee alleging that her "union president" threatened a wildcat strike and dropped her grievances without properly notifying her. The charge failed to name the employee organization being charged and failed to identify any subsections of the Act which could be violations committed by an employee organization.

Further, even assuming these defects could have been cured, the Director finds that the actions complained of were untimely or did not rise to the level of a breach of a union's duty of fair representation to the employee.

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Appearances:

For the Charging Party,
Karen Timberlake, pro se

REFUSAL TO ISSUE COMPLAINT

On May 8 and 28, 1996, Karen Timberlake, an individual, filed an unfair practice charge and an amended charge with the Commission. The charge names "Beverly Williams, President of Union" as the Respondent. Timberlake alleges that Williams violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(4) and (7).[1/] For the reasons that follow, no complaint can issue on the allegations raised in this charge. N.J.A.C. 19:14-2.3.

1/ These subsections prohibit 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; (7) Violating any of the rules and regulations established by the commission.

First, an unfair practice charge may be filed against an employee organization or against an employer. Although Timberlake names Beverly Williams as "Union President", the charge does not on its face identify any employee organization that is being charged.

Second, the subsections of the Act which Timberlake alleges were violated are prohibited acts by employers, not by employee organizations. Section 5.4(a)(4) prohibits an employer from "discharging or otherwise discriminating against any employees because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this Act." An employee organization could not have violated this section of the Act because only an employer -- not a union -- has the power to discharge or take other adverse personnel actions against employees. Further, the charge does not specify what affidavit, petition or complaint Timberlake filed, or when she gave information or testimony under our Act, for which she was disrciminated against in violation of subsection 5.4(a)(4).

Also, subsection 5.4(a)(7) prohibits an employer from violating any of the rules and regulations established by the Commission." The charge fails to identify what sections of the Commission's Rules Timberlake claims were violated.

Third, the specific actions complained of are not violations of the Act, even if committed by an employee organization. It appears that Timberlake is alleging that "the union" threatened a wildcat strike in August, 1995, and "dropped"

three of her grievances in January, 1996 without properly notifying her.

The "threatened wildcat strike" allegation is untimely. The Commission is precluded from issuing a complaint when a charge has not been filed within six months of the occurrence of the alleged unfair practice. N.J.S.A. 34:13A-5.4(c) provides, in part:

> c. ...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.

This charge was filed on May 8, 1996. Thus, this allegation is beyond the six-month statute of limitations and is therefore dismissed.

Timberlake's claim that Union President Williams dropped her May 10, August 18 and December 6, 1995 grievances and failed to adequately so notify her does not rise to the level of illegal union conduct. Timberlake submitted the August 18 and December 6, 1995 grievances and asked to represent herself. The employer responded with a full explanation of the leave time charged and advised Timberlake that no grievance hearing would be scheduled. There is no allegation that Timberlake asked the union to do anything with regard to these two grievances, nor that the union took, or failed to take any action. No facts here support a conclusion that the union's conduct might violate the Act with regard to the August 18 and December 6, 1995 grievances.

With regard to the May 10, 1995 grievance, Timberlake submitted with her charge a February 15, 1996 letter from her employer. This letter confirmed that a grievance hearing was conducted on January 16, 1996 wherein Timberlake represented herself, and Union President Williams listened. After Williams heard Timberlake's presentation of the facts and management's response, she concluded that "the Union was withdrawing the grievance." The employer's February 15 letter to Timberlake continues,

> "Article VII of the Contract entitled, Grievance Procedures, under Section C(2) states: 'The local Union's decision...to settle the grievance at any step shall be final as to the interests of the grievant and the Union....' As such, since the Union has decided to withdraw your grievance, that ends the matter.

By letter of January 17, 1996, Williams confirmed the union's withdrawal of the grievance to the employer. That letter shows a copy was sent to Timberlake. Although Timberlake asserts she did not receive the letter from the union, the employer also provided Timberlake with a copy enclosed with its February 15, 1996 letter.

Whether a union breaches to duty to represent its members in initiating and processing grievances under the provisions of the contract will be evaluated by this standard: Did the union act arbitrarily, discriminatorily or in bad faith? Vaca v. Sipes, 386 U.S. 171 (1967).

A majority representative does not have an obligation to the pursue every grievance. Rather, it has an obligation to

investigate the claimed contract violation to determine if it has merit. In N.J. Turnpike Employees Union, Local No. 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979), the Commission identified the union's duty to its members when faced with a claimed contract violation:

> ...The union must exercise reasonable care and diligence in investigating, processing and presenting grievances; it must make a good faith judgment in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit...(5 NJPER at 413) (emphasis added).

With regard to the May 10, 1995 grievance that was heard on January 16, 1996, Timberlake was permitted to present the grievance on her own behalf. After the initial presentation, a union is not obligated to advance every grievance beyond the first step of the grievance procedure. Neither the Act, nor the union contract, requires the union to do more than what it did in this instance.

With regard to union's notification to Timberlake that it was dropping the May 10, 1995 grievance, it is apparent that Williams made some effort to inform Timberlake of the decision to drop the grievance. According to the documents submitted by Timberlake, the union announced its decision at the conclusion of the January 16, 1996 grievance hearing. It then followed with a letter on January 17, 1996 which Timberlake apparently did not receive. The employer then provided Timberlake with a copy of that letter on February 15 -- less than thirty days later. We see no

breach of the union's duty to represent Timberlake under these circumstances.

Based upon all of the foregoing, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: November 22, 1996
Trenton, New Jersey