

D.U.P. NO. 91-26

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

In the Matter of

ESSEX-UNION JOINT MEETING and
AUTOMATIC SALES, SERVICEMEN & ALLIED
WORKERS, LOCAL 575,

Respondent,

-and-

Docket Nos. CI-91-46
CI-91-47

BRIAN McNAMARA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint against the Essex-Union Joint Meeting and Automatic Sales, Servicemen & Allied Workers, Local 575. McNamara alleged that he was improperly given a one-day suspension for lateness and brought this unfair practice charge when Local 575 refused to bring his grievance to arbitration. Local 575's decision to not take the grievance to arbitration is not by itself a violation of the union's duty to fair representation.

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Appearances:

For the Respondent, Essex-Union Joint Meeting
DeMaria, Ellis, Hunt & Salsberg, attorneys
(Richard M. Salsberg, of counsel)

For the Respondent, Local 575
Joe DiLascio, Representative

For the Charging Party,
Brian McNamara, pro se

REFUSAL TO ISSUE COMPLAINT

Brian McNamara brought charges against the Essex-Union Joint Meeting and the Automatic Sales, Servicemen & Allied Workers, Local No. 575. McNamara's charges allege that he was improperly given a one day suspension for being late and a grievance over this suspension was denied by the Essex-Union Joint Meeting. Local 575 processed the grievance through several steps but declined to submit the grievance to arbitration. McNamara alleged that the public employer, Essex-Union Joint Meeting, committed an unfair practice

when it suspended him and Local 575 committed an unfair practice when it failed to bring his grievance to arbitration. This Agency has no jurisdiction to hear the merits of McNamara's grievance. The only issue raised which may be a cause of action here is the failure of Local 575 to properly represent McNamara.

A Union is not obligated to bring every grievance to arbitration. Unions 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 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). The fact that a union's decision results in a detriment to one unit member does not establish a breach of the duty. Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); see also Humphrey v. Moore, 375 U.S. 335 (1964). Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca v. Sipes. Rather, a union is allowed "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).

Local 575's decision not to take McNamara's grievance to arbitration is not, by itself, a violation of its duty of fair representation. Ford Motor Co. v. Huffman, 16 NJPER 256 (A21106 1990).

Based upon the foregoing, I do not believe that the Commission's complaint issuance standard has been met and I will not issue a complaint on the allegations of this charge. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: April 15, 1991
Trenton, New Jersey