

D.U.P. NO. 89-3

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

In the Matter of

NEW JERSEY EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-89-7

AGATHA BUTLER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint where the Charging Party failed to prove that the NJEA breached its duty of fair representation by acting in an arbitrary, capricious or discriminatory manner.

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Appearances:

For the Respondent,
Selikoff & Cohen, Esqs.
(Steven R. Cohen, of counsel)

For the Charging Party,
Agatha Butler

REFUSAL TO ISSUE COMPLAINT

On July 8, 1988, Agatha Butler ("Butler" or "Charging Party") filed an Unfair Practice Charge against the New Jersey Education Association ("NJEA" or "Respondent") alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsection 5.4(b)(3).^{1/} Butler alleges that the NJEA breached its duty of fair representation by 1) failing to fund an appeal of an arbitrator's decision upholding her

^{1/} This subsection prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

non-renewal; 2) failing to provide her with an attorney before and during the arbitration proceeding and, 3) failing to inform her of alternate forums for challenging the legality of her dismissal.

Agatha Butler was employed by the Winslow Township Board of Education as a non-tenured Teachers' Aide. At the end of the 1986-87 school year, Butler received notification that her contract would not be renewed for the following school year because of poor evaluations and excessive absenteeism. The NJEA agreed to take her case to arbitration and told Butler that her case would be litigated as a "discipline" matter pursuant to the contract's "just cause" provision. Butler claims she was not informed of other avenues she could take to challenge her dismissal, nor was she made aware of the finality of an arbitrator's decision. An NJEA UniServ representative acted as Butler's representative during the arbitration hearing on March 8, 1988, and filed a post-hearing brief.

On May 16, 1988, Arbitrator Robert S. Weaver issued his opinion and award denying Butler's grievance. Thereafter, Butler asked the NJEA to fund an appeal of the decision. The NJEA agreed to have Butler consult with an NJEA attorney. Butler claims this attorney told her her case was "appealable" and "winable". The NJEA disputes this claim. Upon further review of Butler's case, the NJEA decided not to fund her appeal. Butler objected to this decision and the NJEA consented to send the matter to a three-attorney panel for further consideration. The panel recommended against funding Butler's appeal and the NJEA refused to fund/or file an appeal.

It is Butler's position that the actions of the NJEA constitute a breach of the duty of fair representation. Butler argues that she should have been given the option of filing her case with the Commissioner of Education or in Superior Court instead of going to arbitration, particularly because of the limited grounds for appealing an arbitrator's decision. She further maintains that her case suffered because it was not resolved in a more "legal" setting, and was not handled by an attorney. Lastly, Butler maintains that the arbitrator's decision is so blatantly wrong and full of misstatements that the NJEA is obligated to fund its appeal.

The NJEA denies it violated the Act. It argues that it represented Butler through her arbitration proceeding ably and without discrimination. The NJEA further contends that its decision to take Butler's case to arbitration was prudent and fully within its discretion. Moreover, it maintains that not all of its members' cases are handled by an attorney. The NJEA argues it has a right to make such an internal decision and that here its actions were not arbitrary, capricious or discriminatory. Finally, with regard to the funding of Butler's appeal, the NJEA argues that pursuant to case law and the standards set forth in N.J.S.A. 24:24-1 et seq., the award was properly entered and an appeal would be without merit.

N.J.A.C. 34:13A-5.3 provides in part:

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 interests of all such employees without discrimination and without regard to employee organization membership.

In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the Supreme Court articulated the standard for determining whether a labor organization violated its duty of fair representation. The Court held:

...a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith. [Id. at 190, 64 LRRM 2376]

New Jersey has adopted the Vaca standard in deciding fair representation cases arising under the Act. See Saginario v. Attorney General, 87 N.J. 480 (1981).

Butler's allegations do not contain facts which suggest that the NJEA's conduct toward her was arbitrary, capricious or in bad faith. Neither the NJEA's possible failure to inform Butler of the reasons for all of its decisions, nor the outcome of the arbitration itself, violate the duty of fair representation. Even assuming that the case may have been more successfully litigated in another forum, Butler failed to allege facts which, if true, would be evidence that the NJEA's decision to go to arbitration was motivated by arbitrary, capricious or discriminatory reasons.

The NJEA did not breach its duty when it refused to fund an appeal of Arbitrator Weaver's decision. The Union's decision was based on its belief that there was little likelihood of success in

an appeal of this award in Superior Court. A union has no duty to fund every appeal^{2/} and there is no contention that other employees had similar appeals which were funded. Butler's dissatisfaction with the arbitrator's final disposition is not a sufficient basis for a finding that the union breached its duty of fair representation by refusing to fund its appeal.

An arbitrator's award may not be cast aside lightly. It is subject to being vacated only when it is shown that a statutory basis justifies such action. Kearny PBA Local #21 v. Town of Kearny, 82 N.J. 208 (1978). N.J.S.A. 2A:24-8 sets forth the standards for vacating an award as follows:

- a. Where the award was procured by corruption, fraud or undue means;
- b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;
- c. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown therefor, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;
- d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

Here, Butler has alleged no such improper conduct.

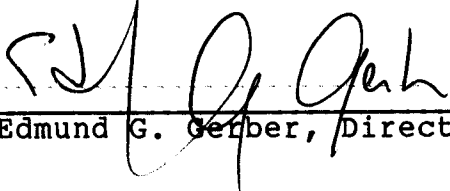
^{2/} It should be noted that the issue here is solely one of financial support.

Moreover, there is consistent case law limiting the grounds for disturbing arbitrator's awards. As was recently stated by the United States Supreme Court in Paperworkers v. Misco, 126 LRRM 3113 (1987):

Collective bargaining agreements commonly provide grievance procedures to settle disputes between union and employer with respect to the interpretation and application of the agreement and require binding arbitration for unsettled grievances. In such cases...the Court made clear almost 30 years ago that the courts play only a limited role when asked to review the decision of an arbitrator. The courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract. (Emphasis supplied; 126 LRRM at 3116)

Butler has alleged no facts to support her claims that the NJEA acted improperly in refusing to fund her appeal or that it breached its duty of fair representation by treating her in a discriminatory, arbitrary or bad faith manner. Accordingly, we have determined that the Commission's complaint issuance standard has not been met and we decline to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: September 1, 1988
Trenton, New Jersey