

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

In the Matter of

NEW JERSEY SPORTS AND EXPOSITION
AUTHORITY
and
GUARDS AND SECURITY LOCAL 1412,
AFL-CIO,

Respondents,

-and-

DOCKET NO. CI-83-61

WILLIE E. NICHOLS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to Charging Party's allegations that he was improperly discharged by the Authority and that his majority representative failed to present a timely grievance on his behalf. The facts indicate that the Charging Party did not ask his majority representative to file a grievance until four months after his discharge. The Director observes that the majority representative did not have an obligation to file a grievance when it was copied with the Charging Party's termination papers, absent a request by the Charging Party for assistance.

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REFUSAL TO ISSUE COMPLAINT

On April 14, 1983, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by Willie E. Nichols ("Charging Party") against the New Jersey Sports and Exhibition Authority ("Authority") and the Guards and Security Local 1412, AFL-CIO ("Local 1412") alleging that the Respondents were engaging in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically N.J.S.A. 34:13A-5.4(a)(5) and (b)(5), respectively. ^{1/}

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives and agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

N.J.S.A. 34:13A-5.4(b) prohibits public employee organizations, their representatives or agents from: "(5) Violating any of the rules and regulations established by the Commission."

On July 6, 1983, the Charging Party amended the charge by asserting an additional violation under §5.4(b)(2). This subsection prohibits public employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purpose of negotiations or the adjustment of grievances."

The Charging Party alleges that the Authority wrongly denied him an extension of a personal leave of absence and without just cause terminated his employment when he failed to return to work. The Charging Party also alleges that Local 1412 did not properly represent him by failing to initiate, on its own motion, a grievance on his behalf when it learned of the termination.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the Charging Party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons below, it appears to the undersigned that the Commission's complaint issuance standard has not been met with respect to the instant charge.

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{3/} N.J.S.A. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

The Charging Party's allegations center upon Local 1412's alleged failure to provide proper representation on Charging Party's behalf relating to his discharge. This claim of unfair representation is encompassed within the purview of §5.4(b)(1),^{5/} rather than under §5.4(b)(2) and (5) as alleged in the charge pleadings. Although the Charging Party has not listed §5.4(b)(1) as the subsection alleged to be violated, the undersigned has considered the Charge as containing a §5.4(b)(1) claim inasmuch as the Statement of Charge substantively contains such allegations.

The standard by which unfair representation claims are reviewed has been established by the Commission in earlier decisions. A majority representative violates its duty to fairly represent a unit member in matters relating to grievance processing when it acts in an arbitrary, discriminatory or bad faith manner. In re Council No. 1, AFSCME, AFL-CIO, P.E.R.C. No. 79-28, 5 NJPER 21 (¶ 10013 1978).

A review of the charge reveals the following relevant factual assertions.

On June 26, 1982, the Charging Party requested, and the Authority granted, 30 days personal leave through July 26, 1982. On July 16, 1982, the Charging Party requested, and was granted, an extension of his leave through August 27, 1982. On August 16, 1982, the Charging Party requested another 30 day extension. On August 26, 1982, the Authority denied the Charging Party's request. Charging Party did not grieve this denial, nor did he ask Local 1412 to grieve

^{5/} This subsection prohibits public 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."

this action. On September 28, 1982, the Authority discharged the Charging Party following his failure to report for work at the conclusion of his approved leave of absence. Charging Party and Local 1412 were promptly notified of this action. Again, the Charging Party did not file a grievance; nor did he request that Local 1412 file a grievance. On December 20, 1982, the Charging Party requested reinstatement by the Authority. On January 17, 1983, the Authority rejected the request. On January 19, 1983, the Charging Party asked Local 1412 to file a grievance on his behalf. The grievance was filed on February 1, 1983. The grievance was denied by the Authority on March 8, 1983. The Authority advised that under the governing collective negotiations agreement grievances are to be filed within five days of the occurrence of the event being grieved, and in this case the discharge occurred some four months prior to the filing of the grievance.

The Charging Party claims that Local 1412 should have filed a grievance on his behalf when it was copied with his termination papers in September 1982 and should not have waited until he requested its assistance in January 1983. He further submits that Local 1412 should have contacted him following his discharge. ^{6/}

The undersigned cannot view the failure of a majority representative to unilaterally present a grievance on behalf of a unit member as an arbitrary, discriminatory or bad faith action. Common sense dictates that an employee aggrieved by a disciplinary determination would normally approach the majority representative with a request for

^{6/} Charging Party was temporarily residing out-of-state when he was discharged. The Authority sent his termination papers to his forwarding address. Charging Party has not asserted that he was unaware of his termination.

assistance. In the context of employee inaction, the majority representative may assume that the employee does not want to grieve. Were the majority representative to proceed unilaterally to present a grievance affecting one individual, in the absence of the individual's request and possibly inconsistent with the individual's desire, the stability of the employer-employee relationship developed by the employer and the majority representative would seriously be impaired. ^{7/}

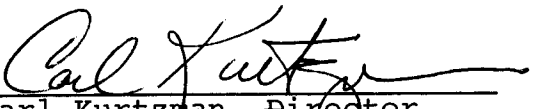
The undersigned therefore finds that the failure of a majority representative to present a grievance when the employee does not request that a grievance be presented is not an act of unfair representation absent extraordinary circumstances, not present here, and in the absence of allegations which would establish that the Respondent's actions were arbitrary, discriminatory or were committed in bad faith. The undersigned notes that the Charging Party did not copy Local 1412 with his requests for extensions of his leave of absence and did not otherwise act to place the majority representative on notice of his concern for retaining his employment with the Authority. Neither does the Charging Party allege that Local 1412 has a policy of soliciting employees concerning their reaction to disciplinary determinations affecting them.

Accordingly, the undersigned finds, for the above reasons, that the allegations of the Charging Party, if true, do not describe conduct which may constitute unfair representation on the part of Local 1412 and declines to issue a complaint. Similarly, inasmuch as

^{7/} Contrast, Red Bank Reg. Ed. Assn. v Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978), wherein the Supreme Court noted that overall unit concerns may motivate a majority representative to file a grievance absent employee authorization.

a finding of unfair representation is necessary in order for an individual to pursue a §5.4(a)(5) claim against an employer, In re N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶ 11284 1980), aff'd App. Div. Dkt. No. A-1263-80T (10/30/81), a complaint against the Authority shall not issue.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Carl Kurtzman, Director

DATED: September 20, 1983
Trenton, New Jersey