

D.U.P. NO. 94-50

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

In the Matter of

PBA LOCAL 105,

Respondent,

-and-

Docket No. CI-94-14

DOUGLAS TINSLEY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that PBA Local 105 violated the duty of fair representation by failing to properly represent a member in the administration of the contract. The Director finds that Local 105's advice to grieve an ungrievable issue, whether negligent or merely incorrect, is not an unfair practice absent allegations of bad faith. The Director further finds that general allegations of harassment and rude behavior by Local 105 officials are not an unfair practice.

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Appearances:

For the Respondent,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Robert A. Fagella, of counsel)

For the Charging Party,
Douglas Tinsley, pro se

REFUSAL TO ISSUE COMPLAINT

On August 30 and September 13, 1993, Douglas Tinsley filed an unfair practice charge and amendments with the Public Employment Relations Commission against PBA Local 105.^{1/} Tinsley alleges that Local 105 violated subsection 5.4(b)(1)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by failing to properly represent him in the administration of the contract.

^{1/} Tinsley also filed position statements in support of his charge in September and October, 1993.

^{2/} This subsection prohibits 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."

Tinsley approached PBA Local 105, his majority representative, about a complaint that he and other so called officers were performing out-of-title work by handling telephone operator duties. Tinsley states that Local 105 instructed him to file a grievance regarding the out-of-title work claim. Tinsley did so on June 30, 1993. Local 105 Vice President Joseph Bukowski represented Tinsley at the grievance hearing. The Department of Corrections ruled that the matter was not contractually grievable, but that Tinsley should instead submit an out-of-title work claim through the Human Resources Office to the Department of Personnel in accordance with Article XXXIV of the agreement.

The Departmental Hearing Officer also noted that the impending implementation of a new telephone system would eliminate the need for blotter officers to perform telephone operator duties. The disputed practice thereafter ceased.

Tinsley argues that Local 105 failed to represent him when it advised him to use the grievance procedure for a contractually ungrievable matter. Tinsley further alleges that, during a June 22, 1993 telephone call to Local 105 Executive Vice Presidents Edward Murphy and Joseph Bukowski, and during three other telephone calls to Bukowski in June and July, 1993, Local 105's officers harassed him and hung up the phone when he asked for help with the out-of-title work claim and tried to explain why he believed filing a grievance over the issue was improper. Tinsley asserts Local 105 President Thomas Little also harassed him at the July 16, 1993

grievance hearing. Tinsley contends that Local 105 representatives placed him on public display, insulted him in the presence of individuals outside of the bargaining unit, argued with him and generally refused to talk to him.

Local 105 argues that it processed Tinsley's grievance in good faith and represented him in the grievance hearing. It notes that the subject of the grievance has been resolved and the issue is moot. It urges the dismissal of the charge.

Tinsley argues that the fact that the out-of-title work issue was resolved ... "does not detract one iota from the fact that this representative organization failed to properly execute the terms and conditions of our Agreement."

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

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

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances:

In the specific context of a challenge to a union's representation in processing a grievance, the United States Supreme Court has 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, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190 (1967)

(Vaca). The courts and this Commission have consistently embraced the standards of Vaca in adjudicating such unfair representation claims. See, e.g., Saginario v. Attorney General, 87 N.J. 480 (1981); In re Board of Chosen Freeholders of Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (April 1, 1982), pet. for certif. den. (6/16/82) ("Middlesex County"); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) ("Local 194"); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). [footnote omitted]

We have also stated that a union should attempt to exercise reasonable care and diligence in investigating, processing and presenting grievances; it should exercise good faith 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. Middlesex County; Local 194. All the circumstances of a particular case, however, must be considered before a determination can be made concerning whether a majority representative has acted in bad faith, discriminatorily, or arbitrarily under Vaca standards. [OPEIU Local 153 at 13.]

To establish a claim of a breach of the duty of fair representation, "the union's discrimination must be intentional, severe, and unrelated to legitimate union objectives." Amalgamated Assn. of Street, Electric, Railway and Motor Coach Employees of American v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

Tinsley does not allege that Local 105 failed to process his grievance; rather, he believes that its advice to grieve an issue that was not grievable pursuant to the contract is an unfair practice. In State of New Jersey (Vineland Developmental Center), P.E.R.C. No. 90-115, 16 NJPER 388 (¶21159 1990), adopting H.E. No.

90-33, 16 NJPER 109 (¶21042 1990), the Commission found that a union did not breach its duty of fair representation by relying on the wrong contract provision to incorrectly advise a member that an issue was not grievable. The Commission held that no harm resulted because the union represented the employee after she filed the grievance herself.

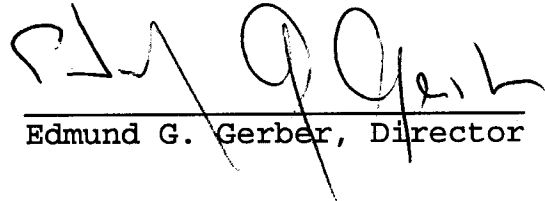
Even if Local 102's advice to file a grievance was negligent, mere negligence, standing alone, is insufficient to find that a union has breached its duty of fair representation when it exercises its discretion in good faith. Service Employees International Union, Local No. 579, AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977); Printing and Graphic Communication, Local No. 4, 249 NLRB No. 23, 104 LRRM 1050 (1980), reversed on other grounds 110 LRRM 2928 (1982). In New Jersey Turnpike Authority, P.E.R.C. No. 88-61, 14 NJPER 111 (¶14041 1988), adopting H.E. No. 88-23, 14 NJPER 5 (¶19002 1987), the Commission found that a union's alleged negligence in advising an employee to file complaints by letter rather than on a grievance form did not breach the duty of fair representation where such negligence did not prevent the employee from presenting complaints and having them considered by the employer. It appears that Tinsley was not harmed by the PBA's advice to file a grievance. Tinsley's out-of-title work claim was considered by his employer through the grievance procedure and then forwarded to the Department of Corrections' Human Resources Office.

Tinsley does not allege facts that demonstrate that Local 102's advice to grieve the out-of-title work issue was given in bad faith. A union's misrepresentation of information has been held not to violate the duty of fair representation when there is no evidence that the misrepresentation was deliberate or in bad faith and when any harm resulting from the union's actions is de minimis. AFSCME Local 2293, P.E.R.C. No. 82-87, 8 NJPER 223 (¶13092 1982), adopting H.E. No. 82-27, 8 NJPER 160 (¶13071 1982).

Finally, Tinsley believes that general allegations of harassment and rude behavior by Local 102 officials constitute an unfair practice. However, Tinsley alleges nothing specific to demonstrate that Local 105 interfered with, restrained or coerced him in the exercise of protected rights. Tinsley does not claim that the alleged harassment prevented him from having his grievance processed, obtaining Local 102's assistance at the grievance hearing or getting his problem resolved. Even in the face of a strained relationship between a majority representative and a member, the Commission has held that a union did not violate its duty of fair representation absent evidence that its representatives acted in bad faith. State of New Jersey (Vineland Developmental Center). Tinsley's allegations show a relationship with Local 102 officials that may be strained, but the allegations fail to demonstrate the bad faith necessary to meet the complaint issuance standard.

The Commission's complaint issuance standard has not been met. N.J.A.C. 19:14-2.1. Accordingly, I decline to issue a complaint and the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: June 28, 1994
Trenton, New Jersey