

D.U.P. NO. 97-16

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

In the Matter of

NEW JERSEY TRANSIT  
& AMALGAMATED TRANSIT UNION,  
LOCAL 819,

Respondents,

-and-

Docket No. CI-97-15

LALINE REID,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by Laline Reid against New Jersey Transit and the Amalgamated Transit Union Local 819. The charge is procedurally defective because Reid does not specifically state which subsections were allegedly violated by Local 819. Furthermore, based on the facts alleged in the charge, the Director finds that a Union's decision not to arbitrate a grievance for an employee with an extensive disciplinary record, absent arbitrary conduct undertaken by the Union, is not a breach of the duty of fair representation. Finally, the Director finds that facts alleging retaliation against Reid by New Jersey Transit representatives after she filed an EEOC complaint are not within the jurisdiction of the Commission.

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Appearances:

For the Respondent, New Jersey Transit  
Peter Verniero, Attorney General  
(David S. Griffiths, Deputy Attorney General)

For the Respondent, ATU Local 819  
Fred G. Wright, President

For the Charging Party  
Laline Reid, pro se

REFUSAL TO ISSUE COMPLAINT

On August 12 and 22, 1996, Laline Reid filed an unfair practice charge and an amendment against New Jersey Transit, her former employer, and Amalgamated Transit Union, Local 819, her employee representative, alleging that they violated subsection 5.4(a)(1)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

Reid alleges that in June 1996, ATU Local 819 refused to arbitrate her grievance challenging her termination on March 3, 1996. She also claims that the penalty imposed by New Jersey Transit, termination, was too severe.

After Reid was terminated, a grievance was filed on her behalf and the ATU represented Reid in the first three steps of the grievance procedure. New Jersey Transit consistently denied the grievance. The ATU initially refused to take the grievance to arbitration. Reid appealed the denial to the ATU membership. Her appeal was considered at a June 18, 1996 union meeting attended by 40 members. Her union representative, Joe Costa, read her disciplinary record to the membership. That record included nine incidents resulting in suspensions and numerous verbal and written warnings during a five-year period. Reid also addressed the membership on her own behalf. However, the membership decided not to take her termination grievance to arbitration.<sup>2/</sup>

N.J.A.C. 19:14-1.3(a)(3) requires that a charge shall contain "a statement of the portion or portions of the Act alleged to have been violated." Although Reid filed 5.4(a)(1) charges against New Jersey Transit, Reid's charge filed against ATU Local 819 is defective because she has not stated specifically which subsections of the Act were violated by ATU Local 819. N.J.A.C.

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<sup>2/</sup> The ATU brought an earlier grievance filed on behalf of Reid to arbitration. Reid grieved, in July 1995, a disciplinary 10-day suspension imposed by New Jersey Transit. The arbitrator reduced the suspension to 5 days.

19:14-1.3. Accordingly, a complaint may not issue on this unfair practice charge filed against the Union.

N.J.S.A. 34:13-5.3 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 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) ; New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).  
[10 NJPER 13]

The U.S. Supreme Court has also held that to establish a claim of a breach of the duty of fair representation, such claim "...carried with it the need to adduce substantial evidence of

discrimination that is 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). Further, the National Labor Relations Board has held that where a majority representative exercises its discretion in good faith, proof of mere negligence, standing alone, does not suffice to prove a breach of the duty of fair representation. 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).


Reid does not allege any facts demonstrating discriminatory, bad faith, or arbitrary conduct taken against her by ATU. An employee organization fulfills its statutory obligation to represent employees when it evaluates grievances on their merits and makes a judgment on whether arbitrating the issue is in the interests of its members as a whole. Reid does not have an absolute right to have her grievance arbitrated. Council of New Jersey State College Locals, D.U.P. No. 95-24, 21 NJPER 60 (¶26041 1995); New Jersey Transit Bus Opers. and ATU Division 819, D.U.P. No. 95-23, 21 NJPER 54 (¶26038 1995); Sports Arena Employees, Local 137, D.U.P. No. 95-18, 21 NJPER 43 (¶26027 1994); ATU, Division 821, P.E.R.C. No. 91-26, 16 NJPER 517 (¶21226 1990). Under the circumstances of this case, the decision not to arbitrate a grievance for an employee

with an extensive disciplinary record is not violative of the Act. Therefore, I refuse to issue a complaint on the charge against the ATU.

Further, there are no facts alleged in the charge against New Jersey Transit indicating that Reid was discriminated against based on activity protected by the Act. Reid does allege that representatives of New Jersey Transit harassed her and retaliated against her after she filed an EEOC complaint; however, the Commission does not have the statutory authority to decide cases alleging violations of a citizen's civil rights.

Based on all of the foregoing, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations in this charge.<sup>3/</sup> The charges against New Jersey Transit and ATU Local 819 are dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: September 13, 1996  
Trenton, New Jersey

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<sup>3/</sup> N.J.A.C. 19:14-2.1 and 2.3.