

D.U.P. NO. 91-31

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

In the Matter of

MONROE TOWNSHIP FEDERATION
OF TEACHERS,

Respondent,

-and-

Docket No. CI-91-75

DR. JOHN LEE BERSH,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by John Lee Bersh, an individual, against the Monroe Township Federation of Teachers. The Federation wrote a letter to Bersh's supervisor on behalf of a fellow employee. The letter was critical of Bersh's behavior at a meeting and sought the employer's solicitation of an apology from Bersh. Bersh admitted he used profanity and was aggressive at the meeting. Based upon Bersh's admission, the Federation's actions were not arbitrary, capricious or in bad faith.

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Appearances:

For the Respondent,
Kevin Marcus, President
Don Edwards, Vice President

For the Charging Party,
Dr. John Lee Bersh, pro se

REFUSAL TO ISSUE COMPLAINT

On May 23, 1991, Dr. John Lee Bersh filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Monroe Township Federation of Teachers Local 3391, alleging it violated N.J.S.A. 34:13A-5.3.^{1/}

The allegations of Bersh's charge do not constitute an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

Bersh's charge concerns a letter from Bersh's majority representative to his supervisor concerning Bersh's conduct at a

^{1/} Bersh failed to allege which subsections of 5.4 were violated.

meeting. The letter asks Bersh's supervisor to solicit an apology from Bersh. In Bersh's description of the meeting in his charge, Bersh admits he used profanity in an aggressive manner.

A majority representative is responsible for representing the interests of all unit members without discrimination. Subsection 5.4(b)(1) requires that an employee organization fulfill its duty of fair representation. New Jersey has adopted the standard set forth in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), for deciding duty of fair representation cases. D'Arrigo v. N.J. State Bd. of Mediation, ___ N.J. ___ (1990). In Vaca v. Sipes, the Supreme 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]


See also, Union County College Chapter of AAUP (Donahue), P.E.R.C. No. 85-121, 11 NJPER 374 (¶16135 1985).

An employee organization may properly determine the relative merits of "competing" unit members. CWA Local 1082 and Middlesex Cty. Bd. of Soc. Serv., D.U.P. No. 91-6, 16 NJPER 497 (¶21218 1990); Jersey City Medical Ctr., P.E.R.C. No. 88-6, 13 NJPER 140 (¶18240 1987).

It is apparent that the employee representative believed Bersh over-reacted at the meeting. The union representative's belief might be incorrect, but based upon Bersh's admission that he raised his voice and used profanity, the employee representative's actions are not arbitrary, capricious or in bad faith.

Accordingly, the Commission's complaint issuance standard has not been met and I hereby dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: June 24, 1991
Trenton, New Jersey