D.U.P. NO. 99-13

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

In the Matter of

TEAMSTERS LOCAL 866,

Respondent,

-and-

Docket No. CI-99-6

ANTONIO MEJIA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge brought by Antonio Mejia, an individual. Mejia alleged that Teamsters Local 866 committed an unfair practice when it failed to adequately represent him at a disciplinary meeting, failed to give him advance notice of the purpose of the meeting and gave him bad advice at the meeting which caused him to resign. The Director found that all of the operative events of the charge occurred beyond the six-month statute of limitations set forth in the Act and that there is no evidence that Mejia was prevented from filing his charge in a timely manner.

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Appearances:

For the Respondent,
Maccarone & Farhi, attorneys
(Joseph T. Maccarone, of counsel)

For the Charging Party,
Antonio Mejia, pro se

REFUSAL TO ISSUE COMPLAINT

On July 17, 1998, Antonio Mejia, a former employee of the Borough of Florham Park (Borough), filed an unfair practice charge alleging that his employee representative Teamsters Local 866 (Local 866) violated 5.4b(1), (2), (3), (4) and (5)[1/] of the New

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1/ These provisions prohibit 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an

Footnote Continued on Next Page

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it failed to adequately represent him at a disciplinary meeting on December 10, 1997, failed to give him advance notice of the purpose of the meeting, and gave him bad advice at the meeting which caused him to resign. Further, Mejia alleges that Local 866 failed to provide him with a copy of its collective negotiations agreement with the Borough covering his working conditions.

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. Based upon the following, I find that the Complaint issuance standard has not been met.2/

Local 866 represents all employees in the Borough of Florham Park public works department except the maintenance

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1/ Footnote Continued From Previous Page

appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

2/ By letter dated March 26, 1999, I summarized the facts as they appeared, and provided the parties with an opportunity to submit additional arguments or amend their pleadings and responses. All such submissions were to be received no later than April 9, 1999. No additional submissions were received from the parties.

supervisor and clerical staff. Mejia was employed as a public works laborer.

On December 10, 1997, Local 866 Assistant Shop Steward Edward DeCrescenzo attended a disciplinary meeting with Mejia. The incident which precipitated the disciplinary action involved an alleged physical touching by Mejia of another employee. Two eyewitnesses confirmed the touching incident. During the meeting, Mejia initially denied the touching accusation and then recanted his denial and admitted that he touched his co-worker, but that he did so with an explanation related to a bet with the co-worker concerning weight loss.

The Borough offered to allow Mejia to voluntarily resign in lieu of termination. DeCrescenzo was familiar with the Borough's zero tolerance policy regarding unwanted physical contact between employees. Based on what he heard at the meeting, DeCrescenzo recommended to Mejia that he resign. Mejia charges that DeCrescenzo never advised him of his rights under the Local 866 contract grievance procedure to appeal his termination. Local 866 asserts that DeCrescenzo explained to Mejia that if the Borough terminated him, a grievance could be filed. Reluctantly, Mejia accepted the Borough's offer of voluntary resignation. After the resignation, Local 866 would no longer file a grievance on Mejia's behalf.

After he resigned, Mejia filed for, but was denied, unemployment benefits. He appealed the denial. On March 19,

1998, the Department of Labor conducted a hearing and determined on March 20, 1998 that although Mejia touched his co-worker, the touching did not warrant a finding of discharge for misconduct connected with work which would disqualify him for unemployment benefits.

As a result of this determination, Mejia contacted DeCrescenzo and again requested a copy of the labor contract. DeCrescenzo referred Mejia to Local 866 President Angelo Spriggs. Mejia apprised Spriggs of the Department of Labor finding, told him that the disciplinary charges were unjust and requested a copy of the contract. Spriggs explained that he could not assist Mejia any more but sent Mejia a copy of the contract on April 3, 1998.

Mejia alleges that over the years he requested a copy of the parties' contract, but never received one until he contacted Spriggs sometime after he resigned. Local 866 denies refusing to provide the contract, and counters that the contract is on file in the public works shop in Borough Hall and was available to all employees through the foreman or the shop steward.

ANALYSIS

This charge has not been filed within the statutory time limitations. N.J.S.A. 34:13A-5.4(c) provides:

> that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

See State of New Jersey, D.U.P. No. 93-18, 19 NJPER 75 (¶24034 1992).

Mejia filed his charge on July 17, 1998. All of the events of the charge occurring on or prior to December 10, 1997, the date of the disciplinary meeting with the employer and Mejia's resignation, and are beyond the six-month statute of limitations set forth in N.J.S.A. 34:13A-5.4(c). There is no evidence or allegation that Mejia was prevented from filing his charge in a timely manner.

As to the events alleged in the charge which occurred after December 10, the March decision relating to Mejia's unemployment benefits does not trigger a new operative event which extends the six month statute of limitations because the unemployment determination, standing alone, does not establish that Local 866's advice on December 10, 1997 violated its duty of fair representation, specifically that Local 866's conduct toward Mejia was "arbitrary, discriminatory or in bad faith." OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); Belen V. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca V. Sipes, 386 U.S. 171 (1967). An employee representative is obligated to exercise reasonable care and diligence in investigating the merits of a claimed grievance. Middlesex Cty. and NJCSA (Makaronis), P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. 91 N.J. 242 (1982); Carteret Ed. Assn. (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997). Local 866 did that here. It listened to the eyewitness accounts of Mejia's conduct, listened to Mejia's explanation of the event, and based upon the

Borough's no-contact policy, gave Mejia its best advise based on the circumstances' and suggested that Mejia accept the resignation option.

But even if Local 866 was negligent in investigating the disciplinary charges and, therefore, gave Mejia faulty advise, mere negligence is insufficient to find that a union 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).

Finally, Mejia appears to have made repeated requests for a copy of the contract before his resignation. The apparent fact that Mejia again requested and eventually received a copy of the contract after his resignation did not toll the statute of limitations or create a new cause of action. The operative event was still the December 10 disciplinary meeting and resignation. Once Mejia resigned on December 10, 1997 he was no longer an employee. To the extent that Mejia had a right to a copy of the contract, that right ended once he tendered his voluntarily resignation. As a former unit member, his entitlement to the contract no longer existed, except insofar as Local 866 chose to voluntarily honor his request. Therefore, even if this charge were timely, his request for a contract after his resignation would not constitute an unfair practice within the meaning of the Act.

Based on the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.3/

ORDER

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Stuart Reichman, Director

DATED: May 5, 1999
Trenton, New Jersey

3/ N.J.A.C. 19:14-2.3.