

D.U.P. NO. 86-14

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

In the Matter of

A.F.S.C.M.E., COUNCIL 52,

Respondent,

-and-

DOCKET NO. CI-86-58

E. BRUCE SMITH,

Charging Party.

Synopsis

The Director of Unfair Practices refuses to issue a complaint on an Unfair Practice Charge filed against A.F.S.C.M.E., Council 52 by E. Bruce Smith, an individual union member. The charge alleges that A.F.S.C.M.E. breached its duty of fair representation by refusing to take Smith's grievance to binding arbitration. The grievance involved discipline imposed against Smith for his refusal to pay a \$5 replacement fee for a lost ID/time card.

Applying the standards set forth in N.J. Turnpike Employees' Union, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) and In re Council #1, AFSCME, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978), the Director found that based on the facts presented, the union's actions were not arbitrary, discriminatory or in bad faith. Accordingly, A.F.S.C.M.E did not breach its duty of fair representation.

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Appearances:

For the Respondent

Elizabeth Baker, Staff Rep.

For the Charging Party

E. Bruce Smith, Pro Se

REFUSAL TO ISSUE COMPLAINT

On February 19, 1986, E. Bruce Smith, an individual, filed an Unfair Practice Charge with the Public Employment Relations Commission against A.F.S.C.M.E., Council 52, alleging violations of subsections (b)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup>

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<sup>1/</sup> These subsections 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; (5) Violating any of the rules and regulations established by the commission."

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.<sup>2/</sup> The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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. The Commission's rules also provide that I may decline to issue a complaint if the allegations in the charge do not on their face constitute an unfair practice.<sup>3/</sup>

Mr. Smith, employed by Rutgers University and a member of Local 888, alleges that A.F.S.C.M.E. breached its duty of fair representation by failing to take his grievance to arbitration and by failing to discuss the implementation of an allegedly unfair policy with his employer. The policy in question involves the

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<sup>2/</sup> N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have the 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 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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

<sup>3/</sup> N.J.A.C. 19:14-2.1 et seq.

assessment of a \$5 card replacement fee by the Division of Housing against employees who lose their ID/Time cards. After losing his card, Mr. Smith refused to pay the \$5 fee. As a result, he was suspended for one day and a letter of reprimand was placed in his personnel file. Mr. Smith, with union representation, grieved the discipline, as well as the fairness of the policy itself. The grievance was denied through the third step of the grievance procedure. Thereafter, A.F.S.C.M.E. refused to take the grievance to the fourth step of the grievance procedure, i.e., binding arbitration.

It is the union's position that it did not breach its duty of fair representation but instead acted in a reasonable and diligent manner. It contends that a \$5 replacement fee for a lost ID card is reasonable and since the University was prepared to resolve this matter by rescinding its disciplinary action, under these circumstances, arbitration was unwarranted. Accordingly, the union maintains it was well within its discretion in refusing to take Mr. Smith's grievance to arbitration.

In N.J. Turnpike Employees' Union, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979), the Commission set forth the standards for finding a breach of the duty of fair representation as follows:

In considering a union's duty of fair representation, certain principles can be identified. The union must exercise reasonable care and diligence in investigating, processing and presenting grievances; it must make a good faith judgment in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similiar grievances of equal merit. 5 NJPER at 413

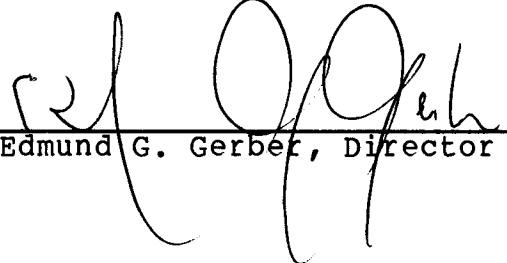
See also, In re Council #1, AFSCME, P.E.R.C. No. 79-28, 5 NJPER 21 (¶ 10013 1978); Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967).

Here, the union does not appear to have breached its duty to fairly represent Mr. Smith.<sup>4/</sup>

The union's decision was based on its belief that there was little likelihood of success in the grievance arbitration forum; the decision was not arbitrary, discriminatory or in bad faith. A union is not obligated to take every case to arbitration and there is no contention that other employees had similar grievances which were taken to arbitration. See, N.J. Turnpike Employees' Union, supra. Mr. Smith's dissatisfaction with the final disposition of his grievance is not a sufficient basis for a finding that the union breached its duty of fair representation.

Accordingly, for all of the reasons set forth above, I have determined that the Commission's complaint issuance standard has not been met and I decline to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES PROCEEDINGS

  
Edmund G. Gerber, Director

DATED: May 1, 1986  
Trenton, New Jersey

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<sup>4/</sup> Smith argued that only employees of the Housing Division are required to pay a \$5 replacement fee for their lost cards and since all employees are issued cards, the policy is unfair. However, the cards issued to Housing Division employees are atypical in that they are computerized, and are used as both ID and time clock cards. Accordingly, regulations in response to this unique circumstance cannot, absent more, be considered unfair.