

D.U.P. NO. 96-12

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

In the Matter of

C.W.A. LOCAL 1044,

Respondent,

-and-

Docket No. CI-95-59

MARTIN A. TREU,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed by Martin Treu against his majority representative, CWA Local 1044. Treu alleges that the union had failed or refused to represent him by failing to send him an informational mailing it sent to dues paying members and failing to communicate with him and other fee paying members about the times, places and strategies of CWA's collective negotiations with Treu's employer. The Director finds that Treu's right to be represented in negotiations by CWA was not implicated by any of the alleged facts and therefore, these actions do not rise to an unfair practice.

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Appearances:

For the Respondent
Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

For the Charging Party,
Martin A. Treu, pro se

REFUSAL TO ISSUE COMPLAINT

On February 28 and March 23 1995, Martin Treu, an employee of Burlington County, filed an unfair practice charge with the Public Employment Relations Commission against his majority representative, CWA Local 1044, alleging that it violated subsections 5.7, and 5.4(b)(1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Treu, a

^{1/} These subsections prohibit employee organizations, their representatives or agents from: ". . . discriminat[ing] between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this Act" and, 5.4(b)(1): "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

representation fee payer, alleges that Local 1044 discriminated against him and all other fee paying employees in that it failed to include them in a September 1994 mailing concerning contract negotiations with the County of Burlington, failed to communicate with them in any way as to "their representation during contract talks," and failed to inform them about the Local's bargaining strategy, times and dates of negotiations sessions, whereas dues paying union members were so informed.

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 charged. 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.^{2/} The Commission's rules provide that I may decline to issue a complaint.^{3/}

N.J.S.A. 34:13A-5.7 grants the Commission unfair practice jurisdiction in disputes about the payment of representation fees. See Boonton Bd. of Ed. v. Judith M. Kramer, 99 N.J. 523 (1985),

^{2/} N.J.A.C. 19:14-2.1.

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

certif. den. U.S. Supreme Ct. Dkt. No. 85-684 (3/10/86). None of the alleged facts here concern the payment of representation fees. Accordingly, this part of the charge is dismissed.

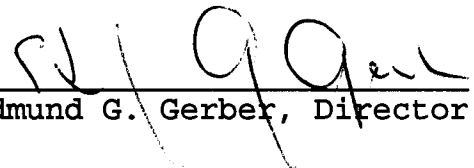
The next allegation is that CWA discriminated against fee payers by not communicating the dates and times of negotiations sessions or sending a September 1994 informational mailing to fee payers while communicating with and sending the mailing to dues paying members. Even if these allegations were proven true, the Commission's complaint issuance standards have not been met.

Unions must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. While it may appear that CWA's alleged conduct discriminates against fee paying unit members, no alleged facts show that these employees were harmed by this conduct. The anti-discrimination requirement does not mean that a union must treat all unit members identically. None of the alleged facts show that this union failed to represent the charging party in collective negotiations. There is no individual statutory right to be apprised of the union's negotiations strategy or schedule, or to receive pre-negotiations mailings. In Woodbridge Tp. Federation of Teachers, P.E.R.C. No. 81-66, 6 NJPER 565 (¶11286 1980), the Commission dismissed a charge alleging that a teachers union failed to notify a group of non-member nurses about the status of a grievance concerning their reimbursement for use of private vehicles. In dismissing the charge, the Commission noted that there was no allegation that the union had not diligently represented the

nurses' grievance. This case is similar. Here, as there, the disparate treatment does not rise to an unfair practice because the statutory right to be represented in collective negotiations was not implicated.

Based upon all the above, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 6, 1995
Trenton, New Jersey