D.U.P. No. 2011-5

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

In the Matters of

COUNTY OF MONMOUTH,
Respondent,

-and- Docket No. CI-2008-039

STEVEN WHITE,
Charging Party.

CWA LOCAL 1034,
Respondent,

-and- Docket No. CI-2008-040

STEVEN WHITE,
Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses all allegations contained in two unfair practice charges in which the Charging Party alleged that his majority representative and his employer violated sections 5.4b(1) through (5) and 5.4a(1) through (7) of the New Jersey Employer-Employee Relations Act, respectively.

The Director finds that allegations of the employer's conduct in violation of the Act which allegedly occurred from January 9, 2007 to December 10, 2007 were untimely under the Act. Other alleged violations by the employer which occurred between December 10, 2007, and the filing of the charge, although timely filed, were dismissed for failure to demonstrate that the employer discriminated, retaliated, threatened or harassed the Charging Party for any exercise of rights protected by the Act. Finally, the Director dismissed the allegation that the employer failed to process the Charging Party's grievances.

The Director dismissed the 5.4b(1) through (5) charge allegations against the majority representative finding that the Charging Party had alleged no facts which suggested that the representative had failed to process grievances, failed to respond to issues raised by the Charging Party with the employer or failed to respond to his requests for help. Therefore, under Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), there was nothing to suggest that the majority representative acted arbitrarily, discriminatorily or in bad faith toward the Charging Party.

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Appearances:

For the Respondent - County,
Kenney, Gross, Kovats & Parton, attorneys
(Douglas J. Kovats, of counsel)

For the Respondent - Local 1034,
Law Offices of Barry Isanuk
(Barry D. Isanuk, of counsel)

For the Charging Party,
Steven White, pro se

DECISION

On May 15 and June 10, 2008, Steven White (Charging Party) filed unfair practice charges and amended charges with the Public Employment Relations Commission (Commission) against his employer, Monmouth County - CI-2008-039 (County) and his majority

representative, CWA Local 1034 - CI-2008-040 (Union or Local 1034)[1/]. The Charging Party alleges that the County violated 5.4a(1) through (7) of the New Jersey Employer-Employee Relations Act,[2/] N.J.S.A. 34:13A-1 et seq. (Act) and that Local 1034 violated 5.4b(1) through (5) of the Act.[3/]

1/ At the time this charge was filed blue collar employees employed by Monmouth County were represented by CWA Local 1034. Subsequent to the filing of the charge CWA Local 1034 was divided into two separate locals and renamed CWA Local 1036 and CWA Local 1038. The Monmouth County blue collar unit that included the Charging Party is now represented by CWA Local 1038.

2/ These provisions prohibit 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission." There are no facts to support the 5.4a(2), (4) or (7) allegations, and those allegations must be dismissed. The 5.4a (5) and (6) provisions of the Act run only to the majority representative. An individual employee/unit member has no standing to pursue these provisions, therefore, these allegations must also be dismissed.

3/ These provisions prohibit employee organizations, their (continued...)

With regard to the County, the Charging Party alleges that "for the past year" (which from the date of the filing of the charge runs from mid-2007 to June-2008), he filed nine grievances and several complaints in which he alleged "harassment, discrimination, abuse, maltreatment, safety issues, retaliation, negligence and management's failure to intervene to stop discrimination and harassment". The Charging Party also alleges that the County failed to process his grievances and forward them to the next level of management. Additionally, he alleges that on April 16, 2008, he was threatened by a County supervisor after he had submitted another grievance. Finally, he alleges that the County violated the Act by denying him his rights provided in the County employee guide. That guide sets forth the County's policy dealing with work place discrimination and harassment.

3/ (...continued)
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 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." There are no facts to support the 5.4b (5) allegation, and that allegation must be dismissed. The 5.4b (2) (3) and (4) provision of the Act run only to the public employer. An employee has no standing to pursue these provisions. These allegations must also be dismissed.

It appears that the Charging Party seeks to have the County process the grievances he has filed and stop the harassment and discrimination it allegedly engaged in.

In his charge against Local 1034, the Charging Party alleges that the Union failed to respond to his grievances and complaints against the County. Additionally, he alleges that after meeting to discuss his grievances with the Local 1034 President on January 23, 2008, he forwarded copies of the grievances to the Union President. Allegedly, thereafter, he received no response from the Union President.

On July 1, 2008, the County filed a position statement along with copies of grievances and a copy of a response to an April 14, 2008 letter the Charging Party had sent to the County Personnel Officer, Fredericka Brown. The County also submitted results of several investigations it conducted in response to similar allegations filed by the Charging Party with other administrative agencies. The County argues that it responded to the Charging Party's complaints and processed his grievances, but that the Charging Party was not satisfied with the responses or outcomes and therefore filed the instant charges. The County asserts that it afforded the Charging Party all rights due him and it denies any discrimination, harassment, retaliation or threats. Finally, the County argues that the charges consist merely of conclusions made by the Charging Party with no specific facts contained in the charges to support those conclusions.

On February 6, 2009, Local 1034 submitted a written explanation of its interaction with the Charging Party. It denies that it failed to respond or represent the Charging Party in his various claims against the County. The Union asserts that after it reviewed the grievances it found that most of them were not "viable under the collective negotiations agreement".

As to grievances filed in late 2007 and early 2008, the Union asserts that it repeatedly requested to meet with the Charging Party to discuss his complaints, but that he did not respond to their requests. They also requested that he provide them with further information to enable the Union to determine whether to go forward on his claims. The Union further asserts that as late as March 23, 2008, it repeated its request to the Charging Party to provide documents and meet with Local 1034's president and its attorney. Thereafter, the Charging Party provided some of the documents requested and the Union was in the process of reviewing his grievances and complaints again when it received the instant unfair practice charge. The Union argues that a conflict of interest would have been created had it continued at that time to represent the Charging Party on the underlying grievances. The Union also asserts that the Charging Party had advised the Union that he had a private attorney, which raised a question as to continued representation by Local 1034. Finally, the Union argues that the unfair practice charges contain conclusions without specific facts regarding when and how

it failed to respond to the Charging Party's request for assistance.

It appears that the Charging Party seeks to have the Union process his grievances concerning alleged harassment and discrimination by the County as a remedy in this charge.

On September 29, 2008, the PERC agent assigned to the instant cases met with the Charging Party to discuss the charges and attempt to clarify the factual basis for his allegations. The Charging Party was given an opportunity to submit further documentation to clarify his charges. The Charging Party mentioned at that meeting that there were similar claims pending before other government agencies. He was requested to submit documentation on the status of those claims to enable us to determine whether they may have had a bearing on possible settlement efforts for the instant unfair practice charges. Having received no submissions from the Charging Party by October 27, 2008, the PERC agent again offered him the opportunity to submit further documents in support of his charges. Shortly thereafter he submitted documentation which has been considered in evaluating the charge against the County.[4/]

4/ Documents provided by the charging party and the County reveal that on October 1, 2007, the Charging Party filed a charge with the Equal Employment Opportunity Commission (EEOC) in which he alleged race discrimination based upon the same allegations set forth in the instant charges. The EEOC dismissed that charge on April 28, 2009.

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. In correspondence dated October 7, 2010, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. None of the parties filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

The following facts appear.

1. The Charging Party was employed by the County on July 10, 2006, as a truck driver in the Highway Division of Public Works and Engineering. On March 14, 2007, he received a one day suspension for "unacceptable job performance". The grievance forms submitted by the Charging Party and the County reveal that the Charging Party filed a grievance on April 11, 2007, three on June 1, 2007, and one on June 22, June 25 and December 26, 2007.

2. The Charging Party filed additional grievances on January 14 and April 16, 2008, and submitted a complaint letter to the County Personnel Officer dated April 11, 2008. In each of his grievances and the April 11 letter, the Charging Party

generally alleges that he was treated "unfairly, discriminated against or harassed" by his supervisor either with regard to job assignments, work hours, or because he reported what he believed to be an unsafe working condition. He also stated that he was denied the opportunity to meet directly with the County Personnel Officer which he believed violated his rights under the collective negotiations agreement and the County's employee guide.

3. The December 26, 2007 grievance specifically alleges "discrimination, harassment and deformation (sic) of character" by the Charging Party's immediate supervisor based on an incident regarding a December 19, 2007 work assignment that he believed was unfair. The grievance alleged an ensuing argument between the supervisor and Charging Party at which the union steward was also present.

The County investigated the December 26 grievance and responded on January 11, 2008, with a denial of the grievance. The January 11 response reveals that the Local 1034 chief shop steward signed the response as "disagreed" and the grievance was forwarded to the next step of the contractual grievance procedure.

4. A January 14, 2008 grievance also alleged harassment and discrimination by the Charging Party's direct supervisor along with an allegation of an unsafe working condition. The documents submitted in the instant charge show that the County addressed

the safety issue, denied the other allegations and forwarded the grievance to the Local 1034 President. The chief shop steward again signed the grievance noting that he disagreed with the denial.

5. The April 11, 2008 letter from the Charging Party to Personnel Officer Brown included a recitation of most of the same issues and allegations of discrimination set forth in grievances prior to April 11. In that letter the Charging Party stated, "I was not satisfied with any of the written responses I received back from the grievances submitted". He believed that after each denial the processing of his complaints stopped. Additionally, referring to an incident in April 2007, between himself and an assistant personnel officer who allegedly refused to see him when he showed up unexpectedly at his office, the Charging Party stated that after that incident his immediate supervisor continued to "harass" and "provoke" him. He believed he was "being punished for filing complaints of harassment and discrimination". Finally, the Charging Party ended the April 11 letter with a request that, "If anything happens to me . . . all people listed below [should be] prosecuted to the fullest extent of the law for their negligence". He then listed 12 names of County supervisors and the Local 1034 President.

In his April letter, the Charging Party did not identify what punishment he had been subjected to, nor does he refer to

discrimination or harassment as a result of filing grievances or other protected activity under our Act.

6. On May 29, 2008, Brown responded to the April 11 letter and also addressed a grievance filed by the Charging Party on April 16, 2008. In her response, a copy of which was provided by the Charging Party and the County, Brown individually addressed the Charging Party's complaints and grievances going back to April 2007. She also explained the County's response to each item. She provided procedural information to the Charging Party regarding the processing of his complaints and any future complaints. She informed him that based upon her investigation of the matters raised in his April 11 letter she saw no reason to meet with him unless he had "additional information". If the Charging Party intended to provide additional information, Brown requested specifics as to names and dates prior to scheduling any meeting with her. Brown provided the Charging Party with a copy of the County's policy prohibiting discrimination and harassment. She also recommended that he contact the County Employee Assistance Program for help with any personal problems he might have been experiencing.

7. On April 16, 2008, the Charging Party filed his final grievance prior to filing the instant unfair practice charges. The grievance was addressed directly to Brown and referenced the April 11 letter. Once again the Charging Party generally alleged discrimination, harassment, violation of his civil rights,

retaliation, etc. In this regard he alleged that on March 27, 2008, he made a request to speak directly to Brown. After being offered assistance from a general supervisor, two highway supervisors, assistant supervisor, and his shop steward, the Charging Party refused to talk with them and continued his demand to talk with Brown. He was referred instead up the chain of command to a manager above the Department Head. He was not given the opportunity to meet with Brown. The grievance also alleged that the County had violated the collective negotiations agreement by failing to "process [his] grievances of the past year".

The April 16 grievance was reviewed and signed-off on by a department supervisor and the chief shop steward with a recommendation that it be handled by a higher administration official.

8. The Charging Party alleges that on April 16, 2008, he was threatened by his assistant supervisor after he submitted "another" grievance. The grievance date is not referenced in the charge, however it is clear that there was a grievance filed on the same date as the alleged threat. The April 11 letter to Brown was attached to the April 16 grievance.

The Charging Party has not set forth facts in the charge or in any documentation he has submitted which describe exactly what the "threat" was that his assistant supervisor allegedly made to him on April 16, 2008. Documents provided by the County reveal

that an investigation was conducted shortly after the alleged April 16 incident. The assistant supervisor accused of making the threat, a second supervisor, two other employees in the Highway Department who witnessed the April 16 incident and the shop steward all gave statements and answered a series of questions regarding the incident.[5/] Essentially the County's investigation revealed that the Charging Party never stated what the alleged threat was either to the general supervisor of the department, his shop stewards or any other employees of the County. The employees of the Highway Department consistently stated that on April 16, 2008, at about 3:20 P.M. the assistant supervisor asked the Charging Party "How was your day"? The Charging Party answered "How do you like your grievance" and the assistant supervisor responded "I like the part where if anything happens to you we will be prosecuted. You have a hell of an imagination". The supervisor then walked away. The employees corroborated the supervisor's recollection of the incident and noted that there was no yelling, loud voices or threatening gestures made by either party. The union steward and second supervisor also stated that the Charging Party never told them what threat the assistant supervisor allegedly made. Based on

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5/ The assistant supervisor also filed a counter complaint of harassment against the Charging Party. The assistant supervisor's complaint was also investigated by the County, including an attempted interview with the Charging Party. He refused to answer any questions concerning the April 16 incident.

its investigation of both claims the County concluded that there was no threat made by the assistant supervisor.

9. On May 29, 2008, the County issued a Preliminary Notice of Discipline to the Charging Party for unacceptable job performance, antagonistic behavior against co-workers, false accusations against his supervisor and overall conduct of retaliation against co-workers as evidenced by his complaints and grievances filed each time management attempted to address his poor work performance and unwillingness to perform work as assigned. The discipline notice contained a recommendation for a 60 day suspension without pay.

10. On June 12, 2008, a Departmental hearing requested by the Charging party was convened regarding the proposed discipline. On June 19, after the hearing the preliminary discipline was upheld. A 45 day suspension was imposed effective June 13 to August 14, 2008.

11. The Charging Party failed to report to work after the August 14, 2008 conclusion of his suspension. As a result he was issued a "resignation not in good standing" pursuant to Civil Service regulations and procedures. He appealed the County's action. Subsequent to a hearing on his appeal before an Administrative Law Judge in the Office of Administrative Law, the resignation was upheld. The Charging Party appealed that decision to the Civil Service Commission. The Civil Service Commission upheld and adopted the ALJ's decision on June 25,

2009. The Charging Party's resignation not in good standing was effective on August 15, 2008.[6/]

As to the charge against Local 1034 alleging its failure to respond to the Charging Party's grievances and "calls for help", the following facts appear.

1. A Local 1034 chief shop steward participated in the County's determinations made on all of the grievances filed by the Charging Party beginning in April 2007 through April 16, 2008. In all cases the steward demonstrated his agreement or disagreement with the County's decision by signing the grievance form/disposition. In several cases the steward forwarded the grievance to the next level.

2. There are no specific facts alleged in the charge that show when and from whom the Charging Party requested help from Local 1034 prior to January 23, 2008.

3. On January 23, 2008, the Local 1034 President met with the Charging Party to discuss his grievances and complaints.

4. Subsequent to the January 23 meeting, a follow-up letter dated February 28, 2008 from Local 1034's attorney advised the Charging Party that the Union had requested the attorney to review his grievances. The attorney requested to meet with the

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6/ While the Charging Party seeks reinstatement to a higher position, there are no facts or allegations in the instant unfair practice charges that his 45 day suspension or his separation from employment with the County were as a result of any exercise of protected activity under our Act or that the Union failed to represent him in those matters.

Charging Party along with the Local 1034 President to discuss whether further processing of the grievances was appropriate. The attorney also asked for supporting documentation. The Charging Party did not respond.

5. By letter dated March 31, 2008, the Union attorney repeated his request for information. He also informed the Charging Party that he had reviewed the grievance forms provided by the Local and was "unclear on how there was a breach of the contract" on any of them. He again requested to meet with the Charging Party if the Union was going to be able to make a decision on going forward on any of the grievances. Finally, the Charging Party was told that absent his response, the Union would assume he no longer wished to process his grievances.

6. On April 14, 2008 the Charging Party returned a copy of the Union attorney's March 31, 2008 letter on which he listed the dates of his grievances from April 11, 2007 through January 14, 2008, along with a copy of his letter of April 11, 2008 to Brown. On April 25, 2008, the Charging Party provided the Local 1034 attorney with copies of the grievances.

7. On May 14, 2008, the Local 1034 attorney again responded to the Charging Party in writing. He informed him that after having reviewed all of the items he had received, he was still unclear what contractual violations the Charging Party was alleging. He also noted that several of the complaints set forth were not contractual and would have been more appropriately dealt

with in other forums within the County or with other outside agencies. Finally, the Union's attorney noted that while normally he would have met with the Charging Party to discuss his grievances as previously proposed, because of the pending May 15, 2008, unfair practice charges, the Union felt it would be a conflict of interest to do so until resolution of the charges. Additionally, he noted that he had been informed by Local 1034 officers that the Charging Party had obtained a private attorney and requested that if that was the case, he should have his attorney contact the Union to determine whether it could continue to communicate directly with the Charging Party. There is no indication that the Charging Party responded to the Union's letter.

8. Regardless of the May 14 letter from Local 1034's attorney, documents submitted by the Charging Party in support of the instant unfair practice charges reveal that the Union's chief shop steward was present at the June 12, 2008, departmental hearing concerning the 45 day suspension proposed by the County.[7/]

ANALYSIS

Our Act provides that:

> No complaint shall issue based on any unfair practice occurring more than 6 months prior to the filing of the charge unless the person

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7/ The Charging Party represented himself before the ALJ with regard to the subsequent proposed "resignation not in good standing" issued by the County on September 9, 2008.

> aggrieved thereby was prevented from filing such charge. N.J.S.A. 34:13A-5.4 (c).

In the instant cases the allegations against the County for alleged discriminatory, retaliatory, or harassing acts etc. . ., which allegedly occurred during the period between January 9, 2007 (as alleged in the April 10, 2007 grievance) and December 10, 2007 are untimely. The allegations that both the County and Local 1034 failed to process the Charging Party's grievances or respond to his requests for help before December 10, 2007, are likewise untimely and must be dismissed. Additionally, there is no allegation that in any of these circumstances the Charging Party was prevented from filing a charge.[8/]

In addition to the earlier grievances, the Charging Party has alleged that the County also failed to process his grievances and complaints filed after December 10, 2007. These allegations are based on acts which occurred within the 6 months prior to the filing of the instant charges and are, therefore, timely. With

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8/ Even if these allegations were timely, the grievance documents from that period reveal that the County and the Union processed the grievances. While the Charging Party admittedly was not satisfied with their disposition, his dissatisfaction does not establish an unfair practice by either the County or the Union. Moreover, the parties collective negotiations agreement provides at Article 5, Grievance Procedure, Step 4 that if a grievance is not satisfactorily settled through Step 3 of the grievance procedure . . . . then the employee may elect to proceed through the New Jersey Department of Personnel, Merit System Board, or request arbitration under this Step . . . There is no indication that the Charging Party chose to exercise this clause of the parties' agreement by moving any of his grievances filed during the January 9, through December 10, 2007 time period.

regard to this portion of the charges, the documentation provided by the County and Union and those provided by the Charging Party himself show that in every case the County did respond to the grievance. In several cases the grievances were forwarded to the next step of the parties' grievance procedure and in one case the grievance was forwarded directly to County Personnel Officer Brown, who in turn responded. Moreover, the parties' grievance procedure provides that an employee may elect to proceed through the New Jersey Department of Personnel, Merit System Board or request arbitration if the grievance is not satisfactorily settled at the lower steps of the procedure. In fact the Charging Party elected to exercise his right to proceed to the Merit System Board after he had been issued a 45 day suspension and subsequent resignation not in good standing in June of 2008. He then had a hearing before an ALJ and thereafter filed a final appeal with the State Civil Service Commission. There are no facts that show the County prohibited the Charging Party from pursuing his grievances beyond the initial steps of the grievance procedure. In his April 11, 2008 letter to Brown, he admits that he "was not satisfied with any of the written responses [I] received back from the grievances submitted". This statement supports a finding that the County in fact, responded to the grievances submitted by the Charging Party. The Charging Party's dissatisfaction with the grievance outcomes does not establish that the County failed to process the grievances which would have

violated the Act. Finally, the grievance references to "discrimination, retaliation, harassment, abuse and maltreatment" are vague and do not appear to be linked to any protected activity engaged in by the Charging Party pursuant to our Act. The only reference to the County's reasons for the alleged retaliation is contained in the April 11, 2008 letter to Brown and the EEOC complaint filed in October 2007. The Charging Party states in his April 11 letter, "it was as if I was being punished for complaints of harassment and discrimination"[9/]. The EEOC complaint alleges discrimination based on race. That allegation was fully addressed in that forum.

For the foregoing reasons, I find that the County has not violated the Act. The facts demonstrate that the County has not failed to process the Charging Party's grievances, nor has it discriminated or retaliated against him, nor has it harassed the Charging Party for any exercise of rights protected by our Act.

Finally, the Charging Party has alleged that he was threatened by an assistant supervisor after filing another grievance in April 2008. The Charging Party has set forth no facts in these charges as to what was actually said or what consequences were threatened. Moreover, it appears that on at least two occasions when the Charging Party was asked by the County to tell them exactly what was said by the supervisor

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9/ Again, it is unclear what harassment and discrimination to which the Charging Party is referring.

accused of the threat, he refused to answer or explain his allegation.

The County has submitted significant documentation of an extensive investigation it conducted in response to the Charging Party's threat allegation. From this documentation it appears that after filing his grievance of April 16, 2008, he encountered an assistant supervisor who asked him how his day was. In response the Charging party answered "how do you like your grievance". The supervisor responded "I like the part where if anything happens to you we will be prosecuted. You have a hell of an imagination". The supervisor then walked away and there was no further interaction between employees. The County's description of the situation was corroborated by several witnesses.

Based on the foregoing, I find that the statements made by the assistant supervisor do not establish a threat against the Charging Party for filing grievances, particularly in light of the Charging Party's repeated refusal to describe to the County what was said between himself and the supervisor and the absence of any such details in the charges. Accordingly, based upon all of the foregoing, I do not believe that the Commission's Complaint issuance standard has been met and I dismiss all charges against the County.

CWA Local 1034

The Charging Party alleges that Local 1034 did not process his grievances or answer his requests for help and, therefore, Local 1034 breached the duty of fair representation owed to him by the union.

The standard for determining whether a union violated its duty of fair representation was first established by the United States Supreme Court in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). The Court in Vaca held that:

> . . . 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. 386 U.S. at 190, 64 LRRM at 2376.

The Supreme Court, subsequently, also held that to establish a claim of a breach of the duty of fair representation:

> . . . carries with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives. Amalgamated Assoc. Of Street, Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

The Commission and the New Jersey courts have consistently embraced the Vaca standard in adjudicating fair representation cases. See Saginario v. Attorney General, 87 N.J. 480 (1981); Lullo v. IAFF, 55 N.J. 409 (1970); Belen v. Woodbridge Tp. Bd Ed., 142 N.J. Super. 486, 491 (App. Div. 1976); Middlesex Cty., Mackaronis and NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp. 2d 113 (¶94 App. Div. 1982), certif.

den. (6/16/82), recon. den. (10/5/82); Egg Harbor Twp. Ed. Assn. (Zelig), P.E.R.C. No. 2002-71, 28 NJPER 249 (¶33094 2002); Fair Lawn Bd. Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982); New Jersey Tpk. Ees. Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

Section 5.3 of the Act empowers an employee representative to represent employees in the negotiation and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly. A violation of that duty 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. The Commission and the New Jersey courts have adopted this standard. Saginario v. Attorney General, 87 N.J. 480 (1981); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Fair Lawn Bd. of Ed. (Solomons), P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

A majority representative does not have an obligation to present every grievance which a unit member asks it to submit. It would be contrary to the most basic labor-management principles and often common sense to require a union to take such action. Camden Cty. Coll., P.E.R.C. No. 88-28, 13 NJPER 755

(¶18285 1987); Trenton Bd. of Ed., P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986). A refusal to file a grievance will be judged by the standard used to determine whether a union breached its duty of fair representation: Did it act arbitrarily, discriminatorily or in bad faith? See Fair Lawn Bd. Of Ed.; OPEIU Local 153.

In the instant case, the Union did not refuse to file grievances on behalf of the Charging Party, nor did it prevent him from filing his own. In fact, in every case the grievances themselves reveal that the Charging Party filed on his own but was represented by a Local 1034 shop steward who forwarded several of the grievances to the next step of the negotiated grievance procedure. In documentation provided by the Charging Party, he admits that he was not satisfied with the responses he received. However, the union is not required to represent one or all unit members to their complete satisfaction. Ford Motor Co. V. Hoffman, 345 U.S. 330, 337-338 (1953); Belen v. Woodbridge Tp. Bd. Ed., 142 N.J. Super. 486, 491 (App. Div. 1976); New Jersey Tpk. Auth., P.E.R.C. No. 88-61, 14 NJPER 111 (¶19041 1988) affirming H.E. No. 88-23, 14 NJPER 5, 11 (¶19002 1987). Where a union has exercised its discretion in good faith, even proof of mere negligence, standing alone, is insufficient to prove a breach of the fair representation duty. Service Employees Int'l 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); Bergen Comm. College., P.E.R.C. No. 86-77, 12 NJPER 90 (¶17031 1985); Fairlawn B/E, P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984).

Moreover, under the terms of the collective agreement, the Charging Party could have pursued his grievances further on his own. The facts indicate that except with regard to his 45 day suspension, he did not do so. Additionally, in a departmental hearing on the suspension, the Charging Party was represented by the chief shop steward and in January 2008 the Local 1034 president met with the Charging Party to discuss his complaints and grievances. Thereafter, the Union's attorney reviewed the grievances, sought more information from the Charging Party and explained in writing that the Union was unclear as to whether any of the grievances set forth a breach of the negotiations agreement. The Charging Party did not respond to the Union's request for more information until mid-April, 2008. The facts indicate that the Union was in the process of again reviewing the Charging Party's grievances when he filed the instant charge. Under these circumstances, it was the opinion of the Union's attorney that to go further on behalf of the Charging Party with regard to his grievances could be a conflict of interest as to the Local.[10/]

10/ There are no allegations in the charges that the Union breached its duty to the Charging Party with regard to his eventual resignation not in good standing.

Based on all of the foregoing, the Charging Party has not alleged facts which suggest that Local 1034 either failed to respond to the issues he raised with the County, failed to process his grievances or failed to respond to his requests for help. The facts presented in documentation provided by the Charging Party regarding Local 1034 and the County do not suggest that the Union acted arbitrarily, discriminatorily or in bad faith in the manner it chose to process his complaints. Accordingly, I find that the Commission's complaint issuance standard has not been met with regard to the charges against CWA Local 1034 and I dismiss those charges.

Consequently, the Commission's complaint issuance standard has not been met on either charge and I decline to issue a complaint on the allegations of these charges.[11/]

ORDER

The unfair practice charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Arnold H. Zudick, Director

DATED: October 25, 2010
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by November 8, 2010.

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